United States Court of Appeals

for the Second Circuit

APPENDIX

Docket No. 76-6065

IN THE

United States Court of Appeals

For the Second Circuit

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Plaintiffs-Appellants,

— *vs* —

UNITED STATES POSTAL SERVICE AND BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL,

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of New York

---

APPENDIX

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(S1942-8061)

Spaulding Law Printing
Syracuse, New York

UNITED STATES COURT OF APPEALS
FILED
MAY 17 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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COMPLAINT, dated 1-13-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD

Plaintiffs,

vs.

UNITED STATES POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL

Defendants.

Plaintiffs City of Rochester ("Rochester") and Genesee-Finger Lakes Regional Planning Board ("Planning Board"), by their attorneys, Goldstein Goldman Kessler & Underberg, for their complaint herein, respectfully allege:

JURISDICTION AND VENUE

1. This is a civil action seeking injunctive and equitable relief to prevent defendants, their agents and those acting on their behalf and/or in concert with them, from proceeding with activities presently under way and intended to culminate in the abandonment by defendant United States Postal Service ("Postal Service") of the main Postal Service located in downtown Rochester at 216 Cumberland Street and presently utilized as the main Post Office for Rochester and vicinity.

2. This action arises under the National Environmental Policy Act, 42 U.S.C. §§4321 et. seq. ("NEPA") and the rules and regulations promulgated thereunder, as well as under Title VI of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. §§4231 of et. seq. and the rules and regulations promulgated thereunder and under Section 204 of the Demonstration Cities and Metropolitan

Development Act of 1966, 42 U.S.C. §3334.

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 (federal question); 28 U.S.C. §1337 (commerce clause); 28 U.S.C. §§2201 - 2202 (declaratory judgments); 28 U.S.C. §1339 (postal matters); 28 U.S.C. §1361 (mandamus); and 5 U.S.C. §701 - 706 (Administrative Procedure Act).

4. The acts, omissions and transactions herein complained of occurred in substantial part within the Western District of New York; venue lies in the Western District of New York pursuant to 28 U.S.C. §1391.

5. The amount in controversy exceeds the sum of $10,000, exclusive of interests and costs.

THE PARTIES

6. Plaintiff Rochester is a municipal corporation authorized and existing under the laws of the State of New York.

7. Plaintiff Genesee-Finger Lakes Regional Planning Board exists pursuant to Article 12-B of the New York General Municipal Law and is the designated areawide clearinghouse for purposes of "A-95 Review".

8. Defendant Postal Service is a public government corporation authorized and existing under the laws of the United States of America and is, for the purposes of the NEPA, and the rules and regulations promulgated thereunder, an agency of the United States government.

9. Defendant Benjamin F. Bailar ("Bailer") is the United States Postmaster General. Relief is sought against Bailer in his official capacity to enjoin him from further illegal actions and to compel him to fulfill his legal duties.

FACTUAL BACKGROUND

10. Upon information and belief, on or about January 1974, defendant Postal Service unlawfully made the decision to construct a new United States Postal Service General Mail and Vehicle Maintenance Facility on a site located in the Town of Henrietta, County of Monroe, State of New York, and to abandon the present Postal Service building located at 216 Cumberland Street, in Rochester, which is presently used as the main post office for the City of Rochester and vicinity.

11. Upon information and belief, the site of the proposed new Postal Service facility in Henrietta consists of approximately 44 acres acquired by the Postal Service at a cost of approximately $1,656,620. Upon information and belief the Postal Service intends to construct a building on the Henrietta site consisting of approximately 366,000 square feet at a construction cost of approximately $12,195,000.

12. Upon information and belief, the site presently occupied by the Postal Service and utilized as the main post office for Rochester and vicinity consists of approximately acres and contains a building consisting of approximately square feet. Said facility is located in the central business district of downtown Rochester and has been utilized as the main Rochester post office for a continuous period of approximately 45 years.

13. Upon information and belief, approximately 1,400 persons are presently employed in the main post office in the City of Rochester.

14. Upon information and belief, the decision of the

Postal Service to construct the new Postal Service facility in Henrietta and to abandon the present main Rochester post office was made unilaterally by defendants without proper consultation with appropriate local and regional authorities and without proper consideration of the impact of that abandonment upon the environment of the City of Rochester.

15. Upon information and belief, on or about November 5, 1974, an environmental assessment was prepared at the request of and was adopted by defendants.

16. Upon information and belief, on or about October 1974, defendants determined not to prepare and file an environmental impact statement pertaining to the construction of the new Postal Service facility in Henrietta and the abandonment of the present Rochester post office.

17. Upon information and belief, construction of the new Postal Service facility in Henrietta was recently commenced despite the absence of an environmental impact statement and despite proper consultation and cooperation with appropriate local and regional planning bodies.

18. In making the decision to construct, and in taking and permitting actions to be taken leading to the construction of the new Postal Service facility in Henrietta and to the abandonment of the present Rochester main post office without preparing and filing an environmental impact statement without proper consultation and cooperation with appropriate local and regional planning bodies, defendants violated, are continuing to violate, and will continue, unless enjoined by this Court, to violate NEPA

and the rules and regulations promulgated thereunder in the respects set forth below, among others.

FOR A FIRST CAUSE OF ACTION
PLAINTIFFS ALLEGE:

19. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "18".

20. The NEPA [at 28 U.S.C. §4321] establishes and declares the policy of the United States to "...encourage productive and enjoyable harmony between man and his environment."

21. In furtherance the national policy established and declared by the NEPA, the NEPA [at 28 U.S.C. §4332(2)(C)] requires all federal agencies to:

> "(2)(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --
> (i) the environmental impact of the proposed action,
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
> (iii) alternatives to the proposed action,
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

22. The abandonment by the Postal Service of the main Rochester post office is a major Federal action significantly affecting the quality of the human environment in the City of Rochester in that, among other things, such abandonment may reasonably be expected to decrease employment opportunities in Rochester

and to adversely affect the general economic and social vitality of the downtown area of Rochester.

23. Therefore, in taking and permitting actions leading toward the abandonment of the present main Rochester post office without preparing and filing an environmental impact statement, defendants violated, are now violating, and will continue, unless enjoined by this Court, to violate the NEPA and the rules and regulations promulgated thereunder.

FOR A SECOND CAUSE OF ACTION, PLAINTIFFS ALLEGE:

24. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "18".

25. The environmental assessment prepared at the request of and adopted by the Postal Service is an inadequate basis to support the decision by the Postal Service not to prepare and file an environmental impact statement in that the environmental assessment (1) fails to consider alternative sites (2) fails to consider the disposition of the building to be abandoned and (3) fails to consider the overall impact of the decision to abandon the present Rochester main post office on the environment of the City of Rochester.

26. Therefore, the decision by defendants not to prepare and file an environmental impact statement prior to taking and permitting actions leading to the abandonment of the Rochester main post office is arbitrary, capricious and violative of the NEPA and the rules and regulations promulgated thereunder.

FOR A THIRD CAUSE OF ACTION, PLAINTIFFS ALLEGE:

27. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "18".

28. The NEPA [at 28 U.S.C. §4331(a) and 28 U.S.C. §4332 (2)(C)] requires all federal agencies to consult with and to cooperate with local and regional authorities in making and effectuating decisions affecting the environment.

29. Upon information and belief, defendants made the decision to abandon the Rochester main post office, and are taking and permitting actions to be taken leading to the abandonment of the Rochester main post office, without proper consultation and cooperation with appropriate local and regional authorities, including plaintiffs.

FOR A FOURTH CAUSE OF ACTION, PLAINTIFFS ALLEGE:

30. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "18".

31. Section 401(a) of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. §4231(a) declares the policy of the United States to promote and consider "the achievement of satisfactory levels of living [which] depend[s] upon the sound and orderly development of all areas, both urban and rural."

32. In furtherance of the national policy established and declared by Section 401(a) the Intergovernmental Cooperation Act of 1968, Section 401(b)[42 U.S.C. §4231(b)] sets out the following:

> All viewpoints - national, regional, State, and local - shall, to the extent possible, be fully considered and taken into account in planning Federal ...development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

33. The proscription of rules and regulations pursuant to enumerated sections of the Intergovernmental Cooperation Act of 1968 has been delegated to the Office of Management and Budget, by Section 403 of the Act, 42 U.S.C. §4233. The Office of Management and Budget has promulgated such rules and regulations, which are contained in 38 Federal Register No. 288 (Nov. 28, 1973) and are referred to as A-95 Review. Said A-95 procedures mandate, for Federal development projects:

> 1) Consulting with...areawide clearing houses and local elected officials at the earliest practicable time in project or development planning the relationship of any plan or project to the development, plans and projects of the State, area or locality in which the project is to be located.
> 2) Assuring that any such Federal plan or project is consistent or compatible with State, areawise, and local development plans and programs indentified in the course of such consultations. Exceptions will be made only where there is clear justification.

34. The plaintiff, Genesee-Finger Lakes Regional Planning Board is the designated areawise clearinghouse for purposes of A-95 Review.

35. Upon information and belief, defendants made the decision to abandon the Rochester main post office, and are taking and permitting actions to be taken leading to the abandonment of the Rochester main post office, wihtout early and proper consultation with appropriate local and regional authorities, including plaintiffs, and without regard to the Comprehensive Regional Development Plan of June, 1975.

PRAYERS FOR RELIEF

WHEREFORE, plaintiffs respectfully ask that this Court:

(A) Issue a preliminary injunction enjoining, pending final adjudication of this action, defendants, their agents and/or those acting in concert with defendants, from taking and/or permitting any further actions leading to the abandonment of the Rochester main post office, including, but not limited to, any further construction of the new Postal Service facility in the Town of Henrietta.

(B) Enter a declaratory judgment that defendants, in making the decision to abandon the Rochester main post office, and in taking and permitting actions toward that end, without preparing and filing an environmental impact statement have violated and are now violating the National Environmental Policy Act and the rules and regulations thereunder promulgated.

(C) Issue a permanent injunction enjoining defendants, their agents and/or those acting in concert with defendants, permanently from taking and/or permitting any further actions leading to the abandonment of the Rochester main post office including, but not limited to, further construction of the new Postal Service

facility in the Town of Henrietta, until such time as defendants establish that they are in full complaince with the NEPA and all rules and regulations thereunder promulgated.

(D) Grant to plaintiffs reasonable attorneys fees, expert witness fees, costs and disbursements of this action.

(E) Grant to plaintiffs such further relief as this Court may deem just and proper.

Dated: Rochester, New York
January 13, 1976

GOLDSTEIN GOLDMAN KESSLER & UNDERBERG

By: Thomas G. Goldman

A Member of the Firm
1800 Lincoln First Tower
Rochester, New York 14604
Telephone (716) 325-1930
Attorneys for Plaintiffs

PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY INJUNCTION, dated 1-13-76.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Plaintiffs,

-vs-

U.S. POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL,

Defendants.

Civ. No. _____

TAKE NOTICE that upon the annexed attorney's affidavit of Thomas G. Dignan, Esq., sworn to January 13, 1976, the affidavit of John Stainton, sworn to January 13, 1976, the affidavit of Stuart Brown, sworn to January 13, 1976 and the summons and complaint herein, plaintiffs will make a motion, pursuant to Rule 65(a), Federal Rules of Civil Procedure, at a motion term of this Court to be held at the United States Courthouse, Rochester, New York, on January 26, 1976, at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order granting to plaintiffs the preliminary injunction demanded in the complaint herein, and for such other and further relief as the Court may deem proper.

Dated: Rochester, New York
January 13, 1976

GOLDSTEIN GOLDMAN KESSLER & UNDERBERG

By: _____
Thomas G. Dignan, A Member of the Firm
Attorneys for Plaintiffs
1800 Lincoln First Tower
Rochester, New York 14604
Telephone (716) 325-1930

AFFIDAVIT OF THOMAS G. DIGNAN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, sworn to on 1-13-76.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD, Plaintiffs, vs. U.S. POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL, Defendants	CIVIL ACTION NO.

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

THOMAS G. DIGNAN, being duly sworn, deposes and says:

1. That he is an attorney at law duly licensed to practice in the State of New York and before the United States District Court for the Western District of New York.

2. That he is a member of the firm of Goldstein Goldman Kessler & Underberg, attorneys for the plaintiffs in this matter.

3. That this is a motion by plaintiffs City of Rochester and Genesee-Finger Lakes Regional Planning Board for a preliminary injunction enjoining, pending the final adjudication of this action, defendants, their agents and/or those acting in concert with defendants, from taking and/or permitting any further actions leading to the abandonment of the Rochester main post office, including, but not limited to, any further construction of the new facility presently being constructed in Henrietta, New York.

4. That the relief herein is sought under the National Environmental Policy Act, 42 U.S.C. §§4321 et seq (NEPA) and the

rules and regulations promulgated thereunder; Title VI of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4231 et seq and the rules and regulations promulgated thereunder; Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3334, and related statutes as set forth in the Complaint herein.

5. It is your deponent's belief, based upon the affidavits submitted herewith in support of this motion, that there is a substantial likelihood that the plaintiffs will prevail on the merits of this lawsuit due to the various violations of the law as detailed therein.

6. I further submit that the supporting affidavits establish that plaintiffs will be irreparably injured by the denial of the preliminary injunction herein requested due to the likelihood that the defendants' action presently under way and intended to culminate in the abandonment by it of the main postal service located in downtown Rochester will have a serious adverse economic, social and physical effect on the environment of Rochester; that the abandonment of the Rochester main post office and the transfer of these facilities to the Town of Henrietta without the Postal Service's considering other alternatives to its action will adversely affect the Rochester downtown area; and that the defendants' failure to comply with the aforementioned laws and requirements deprives plaintiffs of their rights to avoid or mitigate degradation of the Rochester environment through informed decision making.

AFFIDAVIT OF THOMAS G. DIGNAN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, sworn to on 1-13-76.

7. The public interest served by the relief sought herein outweighs any hardship that the defendants might claim in that plaintiffs are seeking full compliance with the laws which Congress has passed in order to preserve, protect and enhance the environment.

8. Therefore, I respectfully submit that, for the reasons set forth in the supporting affidavits submitted herewith, and for the reasons discussed in plaintiffs' Memorandum of Law (to be submitted at the time of argument) plaintiffs are entitled to the preliminary injunction herein requested.

Thomas G. Dignan

Thomas G. Dignan

Sworn to before me this

13th day of January, 1976.

Larry A. Stunz

Notary Public

LARRY A. STUNTZ
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1976

AFFIDAVIT OF JOHN STAINTON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, sworn to on 1-13-76.

CITY OF ROCHESTER AND GENESEE-FINGER LAKES REGIONAL PLANNING BOARD	)
Plaintiff,	)
vs.	)
U.S. POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL	)
Defendants.	)

STATE OF NEW YORK)
COUNTY OF MONROE)
CITY OF ROCHESTER) SS:

John Stainton, being duly sworn, deposes and says:

1. I am the Commissioner of the Department of Community Development of the City of Rochester ("Rochester"). I make this affidavit in support of plaintiffs' application for a preliminary injunction enjoining, pending the final adjudication of this action, defendants, their agents and all those persons acting in concert with defendants from taking and or permitting any further actions leading to the abandonment of the Rochester main post office and the transfer of these facilities to the Town of Henrietta ("Henrietta"), New York, including, but not limited to, any further construction of the Postal Service facility presently being constructed in Henrietta. I am familiar with the facts hereinafter stated, based upon my personal involvement in the events herein described and my review of the records of Rochester maintained in the normal course of its business.

AFFIDAVIT OF JOHN STAINTON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, sworn to on 1-13-76.

THE INTEREST OF ROCHESTER IN THIS MATTER

2. Simply stated, it is Rochester's position that (1) for the reasons discussed in detail below, the abandonment of the Rochester main post office and the transfer of these facilities to Henrietta will have a serious adverse economic, social and physical effect on the environment of Rochester, and (2) for the reasons discussed below and in plaintiff's memorandum of law, the defendants have violated and are now violating applicable federal law in taking actions intended to result in the abandonment of the Rochester main post office and the transfer of these facilities to Henrietta.

THE PRESENT ROCHESTER MAIN POST OFFICE

3. The present Rochester main post office is now located on Cumberland Street in the central business district of downtown Rochester. The present site, consisting of approximately five (5) acres is bounded by Cumberland Street, Hyde Park, Central Avenue and Ormond Street and contains a one and two story building containing approximately seventy-two thousand eight hundred square feet, which is owned by the Postal Service.

4. The site of the present Rochester main post office is readily accessible to the inner loop and hence to the expressway system serving Rochester and the vicinity. Moreover, the present site is contiguous to the AMTRAK station in Rochester and hence to the railway system serving the Rochester area. It is also minutes from the Monroe County Airport and is accessible to the major bus lines.

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AFFIDAVIT OF JOHN STAINTON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, sworn to on 1-13-76.

5. The site of the present Rochester main post office is located at the northern perimeter of Rochester's central business district which is that area within the Inner Loop. As a "one-of-a-kind" facility, the main post office is clearly vital to the efforts of Rochester to improve and revitalize the central business district. In this connection Rochester, with the aid of federal, state and local monies, has already made and expended monies to improve the central business district. Examples of such improvements within or near the Inner Loop is the construction of the Genesee Crossroads, the Upper Falls, the Baden Ormand and the Southeast Area Loop projects. These programs were instituted in cooperation with the federal government and as part of a comprehensive program to eliminate blight and revitalize these areas. Moreover, as part of its efforts to improve the area near the present location of the post office, Rochester, with the aid of federal funds, recently acquired the old Penn-Central Railroad Terminal and the land upon which it is situated. Funds have been allocated by the State of New York and AMTRAK for construction and site improvement of this land which is expected to commence in 1976. The foregoing are some examples of Rochester's efforts to encourage the growth and vitality of the entire downtown area. Rochester is also in the midst of preparing a new downtown development plan in which the site of the present Post Office and the surrounding area will receive detailed attention.

6. Upon information and belief, approximately 1400 persons are presently employed at the Rochester main post office a large number of whom it is also believed are residents of

Rochester. Moreover, the present location of the post office in Rochester is also convenient to the residents of low income and inner city families who find it a continuing source of employment.

7. The Postal Service has indicated its intent to abandon the present building serving as the Rochester main post office and to transfer these operations to Henrietta upon the completion of its new facility in Henrietta, as evidenced by the following:

> "The existing Postal-owned building most certainly will be surplus to the needs of the Service and as such will be offered for disposition under a standard procedure. Federal Government Agencies are solicited to determine whether or not they have a need. This is followed by inquiry to the State, County, and local Government. If all have no interest in the building, it is then placed on the market for public bid" [letter dated Nov. 13, 1975, J.F. Kenyon, General Manager Postal Service Real Estate Division to Genesee-Finger Lakes Regional Planning Board, annexed hereto as Exhibit A, at p. 3.]

8. I submit that the abandonment of the Rochester main post office and the transfer of these facilities to Henrietta will have a serious adverse impact on the overall environment of Rochester for the following reasons:

a. The abandonment and transfer of these facilities to Henrietta will eliminate continuing accessible employment opportunities for low-income and inner city families in Rochester and will contribute to the flow of job opportunities to the suburbs.

b. The soon-to-be-vacant building will negatively affect Rochester's physical environment and be contrary to

Rochester's attempts to eliminate the blight in this area.

c. The presence of a vacant building will reduce the overall vitality of the area and will augment existing social problems in the area at a time when Rochester, with the assistance of federal funds, is attempting to revitalize the City.

d. The abandonment of the Rochester post office and the transfer of the facilities to Henrietta will be a setback to Rochester's efforts to improve the overall environment of the area in which the post office is presently located and will directly affect the public and Rochester, which is charged with the duty of providing for the public health, safety and welfare of its residents.

e. The abandonment and transfer of these facilities will have a severe and detrimental effect on the quality of the human and business environment of Rochester, with which effects Rochester will be required to deal with and mitigate if possible.

f. The abandonment and transfer of these facilities to Henrietta will constitute a setback to local and regional planning which provides that major "one-of-a-kind" facilities like the main post office are vital to the metropolitan area and should be located downtown because it adds to the area's vitality and is still the most accessible to the metropolitan population.

THE NEW POSTAL SERVICE FACILITY IN HENRIETTA

9. Upon information and belief, the source of my belief being a letter dated September 10, 1975 from J.F. Kenyon to the Genesee-Finger Lakes Planning Board [copy annexed as

BEST COPY AVAILABLE

Exhibit B], the Postal Service intends to construct, and is now constructing, a facility in Henrietta consisting of a 366,000 square foot building located on a site of almost 44 acres, at a total cost of approximately $14,000,000. The new facility is, according to Mr. Kenyon's letter dated Nov. 13, 1975 [Exhibit A] scheduled to be completed in May, 1977.

THE FAILURE OF THE POSTAL SERVICE TO CONSULT WITH LOCAL AUTHORITIES AND TO CONSIDER THE IMPACT OF ITS ACTIONS ON THE CITY OF ROCHESTER

10. In January, 1974, the Postal Service, without determining what effects its decision to move the present post office facilities would have upon Rochester, and long before it decided to do any environmental study in connection with its move, unilaterally announced its plans to construct a new facility in Henrietta and to abandon the Rochester main post office. On January 28, 1974, Rochester Mayor Thomas P. Ryan, Jr. communicated Rochester's opposition to that decision in a letter to the then Postmaster General Klassen [Exhibit C annexed hereto].

11. On March 15, 1974 I attended a meeting in Rochester with R. E. Isaacs, the then Assistant Postmaster General for Real Estate, to discuss with him the announced relocation of the Rochester main post office to Henrietta. At that time, on behalf of Rochester, I reiterated its position that it was opposed to the abandonment of the Rochester main post office and the transfer of these facilities to Henrietta. I urged that the Postal Service consider other alternatives to actions which would not adversely affect the downtown Rochester area. On behalf of Rochester I dis-

cussed potential alternative sites for construction of a post office facility within the City limits, including a site within the vicinity of the present post office. Suggestions were also made at that meeting for the integration of the new facility in Rochester with the proposed construction of new railroad station by AMTRAK. We also discussed the adverse effects that the abandonment of the present post office would have on Rochester, particularly its efforts to revitalize Rochester. We also discussed the effects of such a move on the business community and the consequent loss of a continuing source of employment for low-income and inner city families. Discussions also centered around the long-range impact that such a move would have on Rochester at a time when we were trying to revitalize Rochester with the help of federal funds. At that time we were told by Mr. Isaacs that any consideration of a site other than Rochester would be discussed with us before any final decision was made.

12. Following the foregoing meeting with Postal Service officials I wrote and requested they furnish Rochester with copies of their site selection studies and information on the number and distribution of their employees in the area. (See Letter John Stainton to Robert Isaacs, March 20, 1974, Exhibit D). This information has never been furnished to Rochester.

13. Despite the foregoing request by Rochester for the Postal Service to consider alternatives to its proposed actions, and to furnish information with respect to their site selection studies, the Postal Service without filing an Environmental Impact

Statement (EIS) or submitting the site of the proposed relocation in Henrietta or any other site selection studies to appropriate local and regional planning authorities, continued with its plans to relocate and upon information and belief dismissed out of hand any alternative sites. (See Letter R.E. Isaacs to Angello J. Chiarella, March 26, 1974, Exhibit E).

14. During the period between my aforementioned meeting with the Postal Service representatives on March 15, 1974 and the announcement on August 6, 1975 of the Postal Service letting contracts for the construction of the new facility in Henrietta no efforts whatsoever were made by the Postal Service to contact Rochester officials to determine what effects the abandonment of the present facility in Rochester would have upon the economic, social and physical environment of Rochester, nor upon information and belief did it consider alternatives to its proposed action to abandon the Post Office and move these facilities to Henrietta.

15. Immediately after learning that a contract had been let for construction of the new facility in Henrietta, Rochester again notified the Postal Service of its opposition to the abandonment of the Rochester main post office and reiterated that the City's opposition was grounded upon the adverse consequences that the abandonment would have on the downtown Rochester area [SEE: Mailgram dated August 8, 1975 from Beverly Vaughan, Chairperson, Rochester City Planning Committee to the Postal Service and others annexed hereto as Exhibit F].

REASONS WHY PLAINTIFFS ARE ENTITLED TO THE REQUESTED PRELIMINARY INJUNCTION

16. I am advised by legal counsel that a preliminary injunction should issue when (1) plaintiffs have shown that they are likely to prevail on the merits of the action, (2) plaintiffs will suffer irreparable harm if the preliminary injunction is not granted, (3) defendants will not be irreparably damaged by the issuance of the preliminary injunction, and (4) the public interest favors issuance of the preliminary injunction. I submit that, for the following reasons, among others, plaintiffs have satisfied all prerequisites to the issuance of a preliminary injunction:

A. Defendants have neither considered the impact of the subject relocation upon the downtown Rochester area nor consulted, co-ordinated and planned the subject relocation with appropriate local and regional authorities.

17. The lack of proper consultation by defendants with local and regional planning officials is spelled out in the accompanying affidavit of Stuart Brown.

18. The history of the Postal Service's decision to relocate and to abandon the main post office in Rochester clearly demonstrates that the Postal Service, in callous disregard of the law, gave no consideration whatsoever to the impact that its actions would have upon the environment of Rochester or ever seriously considered alternatives to its proposed action, which I understand in accordance with law, they must do.

19. This is demonstrated by the fact that the Postal Service announced its intention to transfer the facility from Rochester to Henrietta in January 1974, long before it undertook or filed any environmental study. In this way, the Environmental Impact Assessment (EIA) which it subsequently filed on November 5, 1974, served as no more than window dressing to justify the Postal Service's prior decision to move its facility to Henrietta.

20. Also, the EIA(copy annexed as Exhibit G) dated November 5, 1974 confined its analysis to the environmental impact upon Henrietta. The EIA indicates that the impact of the relocation upon the overall environment in the area of the abandoned facility, Rochester, was beyond the scope of the assessment. The EIA also goes on to say that "Alternative locations for the proposed project were not within the realm of this study. The project site is the only one known and therefore evaluated". The EIA concludes, therefore, that an "Environmental Impact Statement will not be prepared." (Exhibit G, page 5.1)

21. It is also significant to note that according to the Postal Service memoranda dated October 21, 1974 and October 30, 1974 (annexed collectively as Exhibit H) the Postal Service made its determination not to prepare an EIS prior to November 5, 1974, the date of its EIA, which demonstrates a perfunctory attempt to comply with the law by the defendants.

22. Moreover, despite Rochester's and numerous other interested parties and governmental bodies opposition to the move (see Letter Angelo Chiarella, to E.T. Klassen, Postmaster General,

February 11, 1974; Letter Theodore J. Altier, to E.T. Klassen, Postmaster General, February 18, 1974; Letter Rochester Chamber of Commerce, to Honorable Frank J. Horton, June 25, 1974; Letter Rochester Planning Commission, to William Finn, Postmaster Rochester, July 19, 1974; Letter Monroe County Planning Commission, August 23, 1974; all annexed hereto collectively as Exhibit I) and Rochester's offer of alternative sites only a passing consideration of these alternative sites to the best of your deponent's knowledge was given by the Postal Service. (See Letter R. E. Isaacs to Chiarella, March 26, 1974, Exhibit E.) and the opposition to the move was wholly ignored. Moreover, the Postal Service never asked for or sought any information from Rochester, its Planning Commission, or of the County of Monroe, or the Genesee-Finger Lakes Regional Planning Board. It is apparent, therefore, that the Postal Service's decision to move the facility to Henrietta from Rochester was predetermined and was made without any consideration of what such a move would have on the human and business environment of the Rochester community. (See Letter E. T. Klassen to Congressman Conable, March 18, 1974 and Letter Lintner to Senator Javits, August 16, 1974, annexed collectively as Exhibit J.)

23. I am advised by counsel that the National Environmental Policy Act (NEPA) requires preparation of an EIS and not just an EIA whenever a major federal action is taken which will significantly affect the quality of the human environment. In view of the size, nature and scope of the actions of the Postal

Service which are the subject of this action, I submit that there can be no doubt that the abandonment of the Rochester main post office and the transfer of these facilities to Henrietta is a major federal action. Likewise, because of the consequences, there appears to be no doubt that the quality of the human environment of downtown Rochester will be significantly affected by the abandonment. Because the actions taken by the Postal Service were predetermined and without benefit of an EIA, it appears clear that defendants have proceeded in violation of federal law and that plaintiffs are likely to prevail on the merits of this action.

B. Plaintiffs will suffer irreparable injury if the preliminary injunction is not granted.

24. The maintenance of the status quo and the protection of the public interest are of vital importance in this matter, particularly where it has been demonstrated that the defendant did not comply with NEPA. The continuing removal of the post office facilities from Rochester to Henrietta would render impossible the preparation of an objective and impartial EIS if the court were to so order at a later date. To ultimately compel the Postal Service to prepare an objective EIS after the proposed move is finished completely frustrates the clear intent and spirit of NEPA. The preparation of an EIS is a preliminary duty imposed upon the agency prior to the action which will affect the environment. If the Postal Service's intention to transfer the main post office to Henrietta is allowed to continue unabated it is almost a certainty that the facility's relocation will be irrevoc-

ably and irreversably determined. At best, continued removal would compound the difficulties which would attend the implementation of a remedy should an EIS reveal deficiencies in the Postal Service's decision. Moreover, continued removal of the facilities from Rochester will foreclose consideration of any alternatives to the proposed action by the Postal Service. This would do more to moot a lawsuit than possibly any other single factor. This would be particularly devastating since I understand that consideration of alternatives to the proposed action are dictated by the NEPA. Most importantly, the continued removal of the facility actually denies participation by the public and local regulatory agencies in the governmental process as provided by NEPA. The opportunity to participate in consideration of alternatives to the proposed action is essential to the decision-making process so highly advocated by law. To deny such participation makes a mockery of the law. The denial of participation at this stage of the decision-making process forecloses a meaningful participation at later stages of this process.

C. Defendants will suffer no significant injury by the granting of the preliminary injunction.

25. It is expected that the defendants will claim that an injunction at this time will do them more harm than plaintiffs since construction of the facility in Henrietta is presently under way. However, as the facts leading to the Postal Service's decision to move the facility to Henrietta clearly demonstrate, the decision by the Postal Service was made without regard to

any effect which that move would have on Rochester's environment. It would be a contravention of the law for the defendants to continue with the construction of the new facility in Henrietta and the abandonment of the facility in Rochester when it has made no serious efforts to comply with the law requiring it to preliminarily consider the impact that such a move would have on the Rochester environment in the first instance. Thus, any harm which the defendants claim they will suffer as a result of the maintenance of the status quo pending a decision as to their need to file a full and complete EIS is self-imposed and minor when compared with the long-range harm which Rochester will suffer as a result of the Postal Service's decision to abandon these facilities in Rochester without the benefit of an adequate, full and complete EIS and the consideration of alternatives to its proposed action. Any costs to the defendants as a result of maintaining the status quo pending a decision to file a complete and adequate EIS by the Postal Service could have been avoided in the first instance if the Postal Service had complied with the law. The Postal Service, however, with only a perfunctory attempt at compliance totally obviated the purposes of NEPA; gave no consideration whatsoever to the environmental impact that such a move would have upon Rochester; and as the EIA states did not even consider any alternative to the proposed action in deciding to move to Henrietta and abandoning its facilities in Rochester.

D. Public policy weighs heavily in favor of issuance of preliminary injunction.

26. Moreover, it is appropriate to note that the equit-

able relief sought here is sought in the public interest. It is particularly so since the public interest in this case comes into play when an injunction is sought to enforce a statute or regulation designed to further and protect the public interest. The public interest in this case is to avoid, if possible, any irreversible damage to the already endangered human and business environment of Rochester. On balance, the relatively short delay in construction that will be occasioned by a preliminary injunction, poses a minimal risk of damages to defendants in view of the extensive time anticipated for remaining construction. Indeed, further expenditure of public funds at this time might be wasted to the extent of any decision on the merits adverse to the defendants. The failure of the Postal Service to comply whatsoever with the provisions of NEPA demonstrates clearly that they acted without the law and without any consideration whatsoever as to the effect that their actions would have upon the environment of Rochester. Thus, they cannot be heard to argue that the maintenance of the status quo would cause them injury. The Postal Service was well aware of NEPA and attempted in 1975 to comply with its requirements only after it had already decided in 1974 to move the facilities from Rochester to Henrietta. No analysis whatsoever was made of the environmental impact on Rochester. No consideration whatsoever was given to alternatives to its proposed action. There is no question, then, that the requisite procedures and appropriate disclosures were not made by the Postal Service before its final administrative decision to move the facility

from Rochester to Henrietta was reached. It is apparent that the Postal Service treated NEPA as a mere formality and not as a vital aid in its decision making. The facts leading to the post office's decision to move from Rochester to Henrietta establishes that considerations concerning environmental matters were given no more than a pro forma treatment.

To correct the Postal Service's total disregard of the law, plaintiffs ask that an adequate EIS need be prepared and that the Postmaster General need comply with NEPA and therefore objectively and in good faith reconsider the decision to move the Postal facilities from Rochester to Henrietta. Accordingly and in light of the foregoing, plaintiffs also request that any construction presently occurring at the site in Henrietta be terminated.

John Stainton

John Stainton

Sworn to before me this 13th

day of January, 1976.

Thomas G. Dignan

Notary Public

THOMAS G. DIGNAN
Notary Public in the State of New York
MONROE COUNTY, N.Y.
Commission Expires March 30, 19[illegible]

**Exhibit A – Letter, dated 11-13-75.
annexed to Stainton Affidavit.**

UNITED STATES POSTAL SERVICE
EASTERN REGION
P.O. BOX 8601
PHILADELPHIA, PENNSYLVANIA 19101

November 13, 1975

RECEIVED
NOV 17 1975
GENESEE/FINGER LAKES
REGIONAL PLANNING BOARD

Ms. Margaret Ely
Associate Planner
Genesee/Finger Lakes Regional Planning Board
Suite 500, Ebenezer Watts Building
47 South Fitzhugh Street
Rochester, NY 14614

Dear Ms. Ely:

This office apologizes for the delay in getting the required information relative to the construction of the General Mail Facility at Henrietta, New York. You will recall in our earlier conversations that the initial studies relative to sites available, etc., have been made by the Corps of Engineers which was prior to June of 1973. The required information is assembled from data obtained at various locations.

Reference is made to your most current correspondence of October 29, 1975, and the attempt is made to follow your requirements (a) through (f) in order. The items are as follows:

(a) Attached is a copy of the General Planning Assumptions with regard to the facility. This office has reviewed those assumptions, and it is believed that the only factor missing is the number of facilities directly served by this facility. From this unit, 129 Post Offices are served in the State of New York consisting of communities surrounding Rochester.

Please note in Section 1 that page 2 identifies total areas involved with qualifications relative to non-operating space. You will note on that page that the approximate site required is identified as 36.1 acres. It is very rare, both from the standpoint of the Postal Service's needs and the proper landscaping, etc. that should be a part of a facility of this size, that the site can be confined to just the operating area. This accounts for the difference in site size in the actual purchase which was approximately 44 acres. On the following pages, you will note that the Postal Service in its study of requirements goes into great detail and identifies each and every area to effect its summary of the Postal requirement.

Ex A

Exhibit A

(b) Although this particular site selection was made by the U. S. Army Corps of Engineers, their procedure is very similar to that now in effect. It would not be expected that our most recent procedures could have produced any different result. Obviously, in serving the number of Post Offices involved, consideration must be given to the transportation necessary to receive and deliver mail from the General Mail Facility. All of the vehicle runs involved are computerized, and the computer is pre-programed to find the ideal center from which all transportation runs would total into the least truck miles.

This is a guideline and not gospel. The computer does not take into consideration the actual conditions of the area, i.e., interstate routes, interchanges, existing traffic patterns, etc. However, it does allow the Postal Service to evaluate differences in transportation costs between one viable site and another.

Beginning with this premise sites are identified, and within those identified sites, the other factors such as site development cost, building construction cost, etc. are considered along with the transportation factor. In every case, the Postal Service concerns itself with the effects that such development would have on local communities. It is our desire to attempt to place our facilities, and particularly major facilities, in areas where they would produce the least undesirable impact. After a thorough study of all of the factors involved, the Postal Service determined that the best site for this facility was that selected in Henrietta Township.

(c) Contacts with the City of Rochester and the Town of Henrietta relative to site selection was begun early in 1973. The Postal Service has attempted to obtain details of those meetings, but to date they have not been identified in detail. They were concerned with the city's offer of a site in Rochester that was not acceptable because of location and excessive site improvement costs. The preferred area for the project was the area South of Rochester proper in the Towns of Henrietta, Gates and Brighton. Town Officials of these localities were contacted during the investigation of sites by the Corps of Engineers.

The then Assistant Postmaster General, Real Estate and Buildings Department, was in personal contact with Mayor Thomas Ryan and Mr. Morin, County Manager. On March 15, 1974, at the request of City Officials, Rochester, New York, Mr. Isaacs and members of his staff attended a meeting which was set for 1 P.M. to discuss the new Postal facility. It is understood that the Mayor was unable to attend and that Mr. Freedman, City Manager, was not available throughout the entire meeting. The discussion that followed established that there was no other site offered by the city. The discussion centered around why the Postal Service needed 36 acres, reasons for moving out of the center of town, operations of a new facility, and the services that would remain downtown.

Exhibit A — Letter, dated 11-13-75, annexed to Stainton Affidavit.

It is known that several meetings, both at Henrietta Township and in Washington, DC, were held with Officials of Henrietta Township. As in most instances, communities are concerned with the fact that land being used by the Postal Service for facilities of this size is being removed from the tax rolls. Other sites in Henrietta?

Not the issue

As far as can be determined, there was nothing presented at these meetings that would indicate that the Postal Service was in error in its efforts to adequately service the entire operating area.

(d) In answering your question relative to the proposed disposition of the existing Postal facility, one must also consider that this is likely the real concern of the downtown area and perhaps the Chamber of Commerce. Whenever the Postal Service locates the Mail Processing Facility on the periphery of a community of the size of Rochester, it is always conscious of the fact that the downtown area must continue to have the same financial and customer services that it has been accustomed to. A facility adequate to serve the downtown area will be available to the community. It will be an improved facility that will offer better service to the downtown community.

Not the issue

The existing Postal-owned building most certainly will be surplus to the needs of the Service and as such will be offered for disposition under a standard procedure. Federal Government Agencies are solicited to determine whether or not they have a need. This is followed by an inquiry to the State, County, and local Government. If all have no interest in the building, it is then placed on the market for public bid.

(e) This office has asked the Rochester Post Office to supply you with a map delineating the area served.

(f) The construction of the Rochester facility is scheduled as follows:

(1) Start the structural steel - November 4, 1975.
(2) Complete pre-cast work - April 1, 1976
(3) Complete roof - May 29, 1976
(4) Start mechanization - October 1, 1976
(5) Start Vehicle Maintenance Facility - October 2, 1976
(6) Complete Vehicle Maintenance Facility Roof - July 6, 1976
(7) Complete project - May 22, 1977

The site plan for the new facility will be forwarded under separate cover.

Exhibit A — Letter, dated 11-13-75.
annexed to Stainton Affidavit.

This office sincerely hopes that the above information, in hindsight, will satisfy your needs. It is difficult to assemble in detail all of the actions that have taken place when it is concerned with a span of almost three years, over two agencies, and it is also concerned with personnel no longer with the Postal Service.

Sincerely,

J. F. Kenyon

J. F. Kenyon
General Manager
Real Estate Division

Exhibit B — Letter, dated 9-10-75 annexed to Stainton Affidavit.

RECEIVED SEP 2 9 1975

RECEIVED
SEP 12 1975
GIFL REG.
PLANNING BD.

UNITED STATES POSTAL SERVICE
EASTERN REGION
P.O. BOX 8601
PHILADELPHIA, PENNSYLVANIA 19101

September 10, 1975

Genessee/Finger Lakes Regional Planning Board
Suite 500, Ebenezer Watts Building
47 South Fitzhugh Street
Rochester, New York 14614

Attn: Ms. Margaret Ely
Associate Planner

Dear Ms. Ely:

Reference is made to your correspondence of August 5, 1975 directed to the Empire District. That correspondence was referred to our Washington Headquarters, and in turn referred to this office for reply. Unfortunately I was unable to get all of the information together to forward a letter on Monday as promised. However, immediately upon receipt of the information, I did telephone your office and gave the pertinent data to Mr. Larry Stid.

This letter is in confirmation of that information data.

Building Size - 366,000 square feet gross

Construction Cost - $12,195,000

Site Size - 1,894,424 square feet

Site Cost - $1,656,620

The site selection procedure is rather involved, and it includes an analysis of sites considered based upon the price of the land, the cost of site preparation and the effect of the location on transportation costs. All of these factors must be taken into consideration to arrive at the most sensible location from a cost standpoint, including its effect on continuing operational costs.

Our analysis of the sites considered indicated that the selected location is best suited to our needs.

J. F. Kenyon
General Manager
Real Estate Division

Enclosure mailed separately is an plan
Ex. B

BEST COPY AVAILABLE

Exhibit C – Letter, dated 1-28-74
annexed to Stainton Affidavit.

January 28, 1974

Mr. E.T. Klassen
U.S. Postal Service
Washington, D.C. 20200

Dear Mr. Klassen:

Members of the Downtown Development Committee of Rochester, New York, as well as a number of other citizens of our Community, are most concerned over announced plans to phase out the present Main Post Office on Cumberland Street, and relocate outside of Rochester.

There is land available near the existing facility that could be used for expansion purposes. A Main Post Office, in the center of the City, would be near the railroad station and major users.

There is concern that relocation of the Main Post Office would deal an unnecessary blow to the efforts presently being made to revitalize Rochesters downtown area. For this reason, I hope that the decision to relocate outside of Rochester is not an irreversible one.

If any questions arise, or if I may be of any assistance in this matter, feel free to contact my office.

Sincerely,

Thomas P. Ryan, Jr.
Mayor

TPR:bmr

EXHIBIT C

Exhibit D — Letter, dated 3-20-74
annexed to Stainton Affidavit.

March 20, 1974

The Honorable Robert Isaacs
Asst. Postmaster General for Real Estate
and Building Department
U. S. Postal Service
Washington, D. C.

Dear Mr. Isaacs:

On behalf of the City Manager and myself, I want to thank you and your colleagues for meeting with us in Rochester on current proposals for a new Central Post Office. As we agreed, it will be most helpful to officials of the City if you will forward a copy of your site selection studies, information on the number and distribution of your employees in the region, and photographs or plans of similar installations.

The City administration believes there are potential sites in the City that should be considered since such factors as the cancellation of the Genesee Expressway and the emergent energy crisis may not have been fully anticipated by the location studies conducted for the Post Office.

I appreciate the assistance you have provided, and look forward to further cooperation on these matters.

Sincerely,

John Stainton
Acting Administrator/DURED
JS/NS:em

cc: Mayor Thomas Ryan
Elisha C. Freedman, City Manager
The Honorable Frank Horton

Exhibit D

Exhibit E – Letter, dated 3-26-74 annexed to Stainton Affidavit.

UNITED STATES POSTAL SERVICE
U.S. MAIL

ADMINISTRATION GROUP
Washington, DC 20260

MAR 26 1974

RECEIVED
MAR 29 1974
MIDTOWN PLAZA

Mr. Angelo J. Chiarella, President
Midtown Holdings Corp.
300 Midtown Tower
Rochester, New York 14604

Dear Mr. Chiarella:

Reference is made to your letter of March 11, 1974, concerning sites in the Central Business District of Rochester for our proposed Postal Facility.

On March 15, 1974, I met with the City Officials in Rochester and they were unable to present me with any new sites of sufficient size in the Central Business District.

Sincerely,

R. L. Isaacs
Assistant Postmaster General
Real Estate and Buildings Department

Exhibit E.

Exhibit F – Letter, dated 8-8-75
annexed to Stainton Affidavit.

August 8, 1975
3:20 P.M.

John C. Lintner
Senior Representative
Government Relations Dept.
Office of the Postmaster General
Washington, D. C. 20260

Honorable Jacob K. Javits
United States Senate
Washington, D. C. 20510

Honorable James L. Buckley
United States Senate
Washington, D. C. 20510

Honorable Frank Horton
2229 Rayburn Building
Washington, D. C. 20515

Honorable Barber B. Conable, Jr.
2429 Rayburn Building
Washington, D. C.

[illegible] MAILGRAM

The shocking news of the award of contract for construction of new Post Office in the Town of Henrietta, New York prompts me to urge you to withdraw funds for this project at the proposed location. The Environmental Impact Assessment does not address alternative sites, the economic loss of 1400 jobs in the City and the disposition of the existing downtown facility.

The Rochester City Planning Commission demands that an Environmental Impact Statement be prepared addressing these issues.

Beverly Vaughan
Chairperson
Rochester City Planning Commission

xc - [illegible]
Rochester

Exhibit F

Exhibit G – Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

UNITED STATES POSTAL SERVICE

ENVIRONMENTAL ASSESSMENT
UNITED STATES POST OFFICE
AND VEHICLE MAINTENANCE FACILITY

ROCHESTER, NEW YORK

5 NOVEMBER 1974

PREPARED BY:

KRISTEN SCHAFFER
RESEARCH ASSOCIATE

APPROVED BY:

FRANZ S. VEIT
PARTNER-IN-CHARGE

THE CANNON PARTNERSHIP
Architects - Engineers
2170 Whitehaven Road
Grand Island, New York 14072

Exhibit G

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

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Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART 1

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART ONE
INTRODUCTION

1.1

PROJECT LOCATION

The proposed site of the United States Postal Service General Mail and Vehicle Maintenance Facility is located in the Town of Henrietta, a southern suburb of the City of Rochester.

The site is located in the north eastern corner of Henrietta, not far from the Towns of Brighton and Pittsford. The land in the immediate vicinity of the site, and extending westward, is zoned for relatively light industrial use. However, to the south, the site is contiguous to residential development. The northern boundary is formed by Jefferson Road, with the site having approximately 1,212 feet frontage. The eastern boundary is partially delinated by Seginaw Drive, with the property extending back to a depth of approximately 1,503 feet from the corner. To the west is a vacant parcel of land. The site, encompassing about 44 acres, is similarly undeveloped.

The proposed Genesee Expressway will be as close as .3 miles to the west on Jefferson Road. This will provide easy access to the New York State Thruway (for regional distribution) and to the proposed completion of the outer loop (for distribution in and around the City of Rochester).

The site also offers good accessibility, via Jefferson Road and Route #383, to the Air Transfer Office at Rochester-Monroe County Airport.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

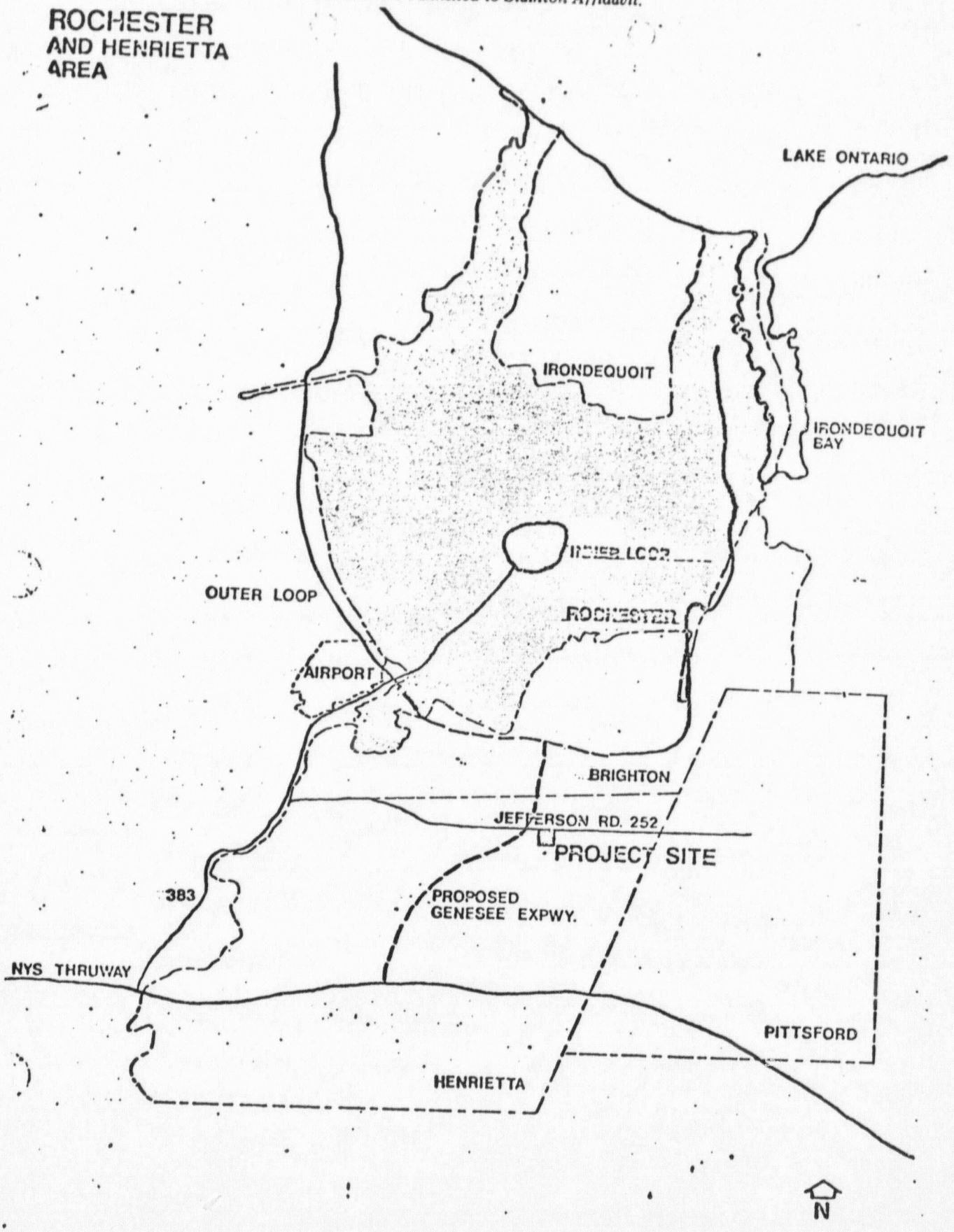

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

NORTHEASTERN HENRIETTA

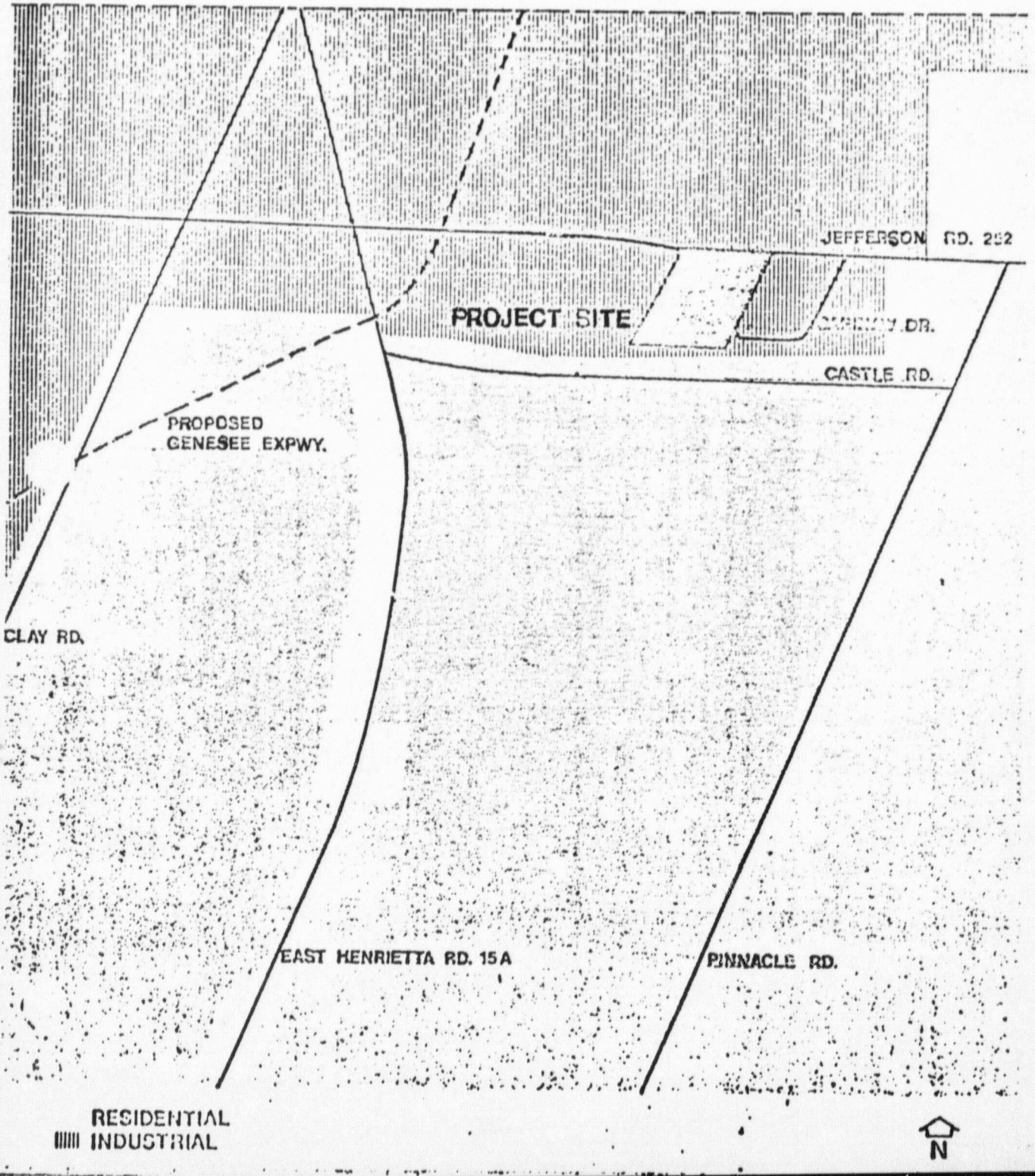

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART 2

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART TWO
ENVIRONMENTAL INVENTORY

2.1

ENVIRONMENTAL SETTING WITHOUT ACTION

PHYSICAL

The proposed project site lies about 11 miles south of the Ontario shoreline. This proximity to the Lake modifies the extreme temperatures, both daily and seasonally, producing a range in temperature much smaller than that of a strictly continental area of a similar latitude. The average daily minimum for January (the coldest month) is 16.7° F., and the average daily maximum for July (the hottest month) is 82.2° F.

This Lake effect also produces cloudiness and precipitation, especially during the colder months. The mean annual precipitation as calculated from 1934, is 32.59", almost uniformly spread throughout the year. In terms of snowfall, the average annual rate, calculated for the past 25 years, is 90.98" per year. The winds are usually from the WSW with a mean speed of 9.6 MPH. This figure does not reflect gusting.

At the present time, the area of the site is meeting New York State and National Ambient Air Quality Standards for suspended and settle-able particulates. Sulfur dioxide standards are also being met.

The terrain in the area of the site is generally level to moderately undulating. To the south this land becomes more rugged. The site elevation ranges from 500 feet above m.s.l. near Jefferson Road, to 520 feet above m.s.l. near the southern property line. This slightly higher elevation juts into the center of the site, forming a wide gradual spine. The area adjacent to Jefferson Road is relatively low-lying, and wet during the spring. Swales run parallel to the east and west boundaries of the site, accommodating the seasonal tributaries of Allen Creek. Water is present in these areas during the seasonally wet periods and after heavy rains.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

2.2

The site is located in the southern portion of the Lake plain of Glacial Lake Dana. The region is covered with glacial drift of a considerable thickness, with unconsolidated desposits of glacial debris overlying the bedrock in most areas. Bedrock is indicated to be slightly more than 450 feet above m.s.l. in the northern portion of the site, and slightly less than that near the southern boundary.[1] The bedrock formation is probably vernon shale, as it appears in wells in the vicinity of the site.

Two wells on properties adjacent to the site, to the south, recorded ground water levels at elevations of 510 feet and 512 feet above m.s.l.[2] However, this record dates back to 1935 and it is possible that considerable changes have taken place since. The development of the land south of the site, and the extended service of the Town water supply are contributing factors. At this time there is little data available to evaluate the extent of these changes.

Information on ground water quality is not available, but ground water is usually unpolluted due to its inaccessibility. The Allen Creek tributaries that traverse the site are still uncontaminated at this point. However both surface water and ground water (although to a lesser extent) are susceptible to the seasonal influx of salt used for roadway de-icing purposes. Irondequoit Bay, into which Allen Creek waters eventually flow, showed an increase in chloride concentration of nearly five fold during the past twenty years. Although present chloride levels are not yet critical, they have exceeded the U.S. Public Health Service recommended limit for human consumption. These chloride levels have changed the characteristics of the Bay. The runoff accumulated from the winter of 1969-1970 was "sufficient to prevent complete vertical mixing of the Bay during the spring. Comparison with 1939 conditions indicates that the period of summer stratification has been prolonged a month by the density gradient imposed by salt runoff."[3]

2.3

The site soil is of the Aifisols order, the Ontario-Hilton Association. Three soil types are indicated to be within the site: Appleton Loam, Hilton Loam and Lakemont Silt Loam. Appleton Loam is somewhat poorly drained to moderately well drained soil, usually found in level areas. Hilton Loam is a moderately well drained soil usually found in gently sloping areas. Both soil types are susceptible to very high water tables during the seasonally wet periods. These types correspond to the central portions of the site. Lakemont Silt Loam is a poorly drained to very poorly drained soil, usually found in level or nearly level areas. It is prone to ponding, and has a seasonally high water table almost to the surface. This soil type is found in moderately wide strips on both the east and west boundaries of the site, corresponding to the location of the tributaries of Allen Creek that flank the site.

The six test borings taken on the site indicate similar findings. All six borings appear to have been taken in the Appleton and Hilton soils. For a depth of up to 5'0", a soil classified as SM (Unified Soil System) was found. Both Appleton and Hilton soils are described as SM (sandy, non-plastic) soils. Below this 5'0" depth, and sometimes closer to the surface, a soil type was found whose description was not consistent with either of the above soil types. Further testing will be done, and determinations will be made from the site specific material.

PART TWO
ENVIRONMENTAL INVENTORY

2.4

ENVIRONMENTAL SETTING WITHOUT ACTION

BIOLOGICAL

The site is characteristic of idle or abandoned farm land. There is the usual second-growth vegetation and weeds. The site contains trees, some brush and shrub growth, and weed or grass vegetation.

The trees are located in long thin groups near the east and west property lines. These areas are generally moist and, during the spring, contain water. Red Maple, White Cedar, and perhaps Willow, are most likely to be found as these types prefer wet locations. Cattails are also found in these areas. Other types of weeds are likely to be: Paintbrush, Queen-Annes-Lace, Goldenrod, Ragweed and Povertygrass.

The environment is supportive of a variety of small wildlife. Meadowlarks, field sparrows, doves and red-wing blackbirds are likely to be seen. Pheasants might also inhabit the site. Small mammals, such as cotton tail rabbits, chipmunks, field mice, brown squirrels and maybe woodchucks, are other likely inhabitants.

It appears that no rare or endangered species inhabit the site.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART TWO
ENVIRONMENTAL INVENTORY

2.5

ENVIRONMENTAL SETTING WITHOUT ACTION

CULTURAL

The Monroe County area was originally inhabited by Indians, the last of whom were the Senecas of the Iroquois confederation. The area was settled by colonists late in the 18th century, but the settlements did not attian real permanence or growth until the opening of the Erie Barge Canal in 1825. From that time until the World War II years, Henrietta was a rural farming community. In 1940, the population of the Town had only reached 2,728.

The post World War II years brought the residential development and expansion typical of areas on the peripheries of cities. At first the growth was gradual as indicated in the population figure of 3,385 for 1950. This was in part due to the danger and severity of flooding in the Genesee River Basin in the western part of Henrietta. With the completion of Mount Morris Lake in Livingston County in 1951, much of this danger was alleviated.

By 1960, the population had more than tripled, rising to 11,598, and almost tripled again by 1970, with 33,017 residents. Census statistics indicate that while suburban populations are increasing, the City of Rochester population is decreasing.

Despite this growth, it is still possible to find single family suburban-type developments surrounded by farmland. However, such situations are becoming increasingly rare. It is the goal of the Town to preserve and maintain the low density (1.5 dwelling units per acre) residential developments and agricultural areas in the southern part of Henrietta. But it is virtually inevitable that the northern areas, closer to Rochester, will become fully developed suburbs of that City. The fact that Henrietta has no town center or village indicates that it views Rochester as its cultural and economic hub.

2.6

Of the 33,017 residents (1970 census figure), more than half are under 25 years old. This indicates a reasonably high number of young families with school age children. Of the population 25 years old or over, the mean number of school years completed is 12.6. Of this age group, 17.5% have a college degree or better. More than 82% of all the inhabitants are natives, born of native parentage. Of the remaining 18%, 38% are of Italian or Canadian descent. The medium family income is slightly over $13,600 per year. Approximately 9% of all families earn $25,000 per year or more, and 2.2% of all families are below poverty levels. In 1970, 1.7% of the total labor force was unemployed. Out of the total Town population, only 115 people were employed as farm workers, yet 77% of all housing units are single family homes. This reflects the trend away from farming to suburban development.

As discussed in the introduction, the proposed project site is located in an industrially zoned area in the north eastern part of the Town. The site is contiguous on its southern side to a residential area. This medium density (6.5 dwelling units per acre) residential development has its own access road and can thus circumvent the industrial area.

The industrial uses permitted in this area are outlined by the Town. Heavy industry is excluded. Representative of the uses are manufacturing plants for various types of equipment (dairy, plumbing, office and business), scientific and precision instruments, and electronic and communication equipment.

This industrial area is not as yet fully developed. It is suburban in nature and the remaining open green spaces add to this effect. There is no unifying element or consistent sense of this area. It is primarily developed with single, low-rise buildings (as opposed to complexes) each with its own parking facilities. The resulting effect is of scattered, visually unrelated structures that are, in turn, unrelated to the landscape.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

2.7

The site is bordered on the north by Jefferson Road (Rt. 252) and on the east by Saginaw Drive, a limited use access loop. There is a traffic signal at the corner where Saginaw Drive meets Jefferson Road, directly across from the main entrance to the Xerox plant.

Jefferson Road is a major artery in the Town of Henrietta. At the present time, from Jefferson Road, one has reasonably good access to the New York State Thruway, very good access to the Rochester-Monroe County Airport, and fair access to the City of Rochester. With the completion of the proposed Genesee Expressway, access to the New York State Thruway will be improved. The completion of proposed Rt. 47 (the outer loop), in conjunction with the Genesee Expressway, will greatly improve access to those areas in and around the City.

Jefferson Road is also the primary route to serve the industrially zoned area, and consequently it is heavily travelled by large trucks and tractor trailers, as well as accommodating the usual automobile use. A 1972 traffic count of Jefferson Road, at Route 1 indicates that an average of 26,410 vehicles utilize this route daily. The count for the peak hour, between four and five o'clock p.m. is an average of 2,250. Both of these figures break down into an even distribution for each direction.

Such a large volume of traffic, especially at peak hours, produces a great deal of noise. Noise levels can reach as high as 90 decibels with heavy trucks. A prolonged exposure to such high noise levels can result in hearing damage. However, this effect is mitigated by distance, enclosures, foliage, etc.

The automobile is the primary mode of transportation, but some limited public transportation is available. The Regional Transit Service offers two services between Henrietta and downtown Rochester. One bus

2.8

leaves from Southtown Plaza (on Jefferson Road at West Henrietta Road) and the other leaves from Suburban Plaza (on East Henrietta Road north of Calkins Road) where parking is available to the patrons. A local bus line runs from Southtown Plaza east on Jefferson Road past the project site. It turns south onto Winton Road and then continues down Pinnacle Road to Calkins Road. Turning west, it stops at Suburban Plaza. The bus continues west, and then north on West Henrietta Road back to Southtown Plaza. This circuitous road provides localized but infrequent bus service to the residents, and connects transfer points for service into Rochester.

All the necessary utilities are available upon application. Of special note is the fact that the site lies outside the sanitary sewer district and a special application must be made for out of district use. The other utilities, water, electricity, gas and telephone are available through the usual process. There is no storm sewer system in the area of the site.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART 3

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART THREE
PROPOSED ACTION

3.1.

ACTION DESCRIPTION

The proposed project entails the construction and operation of a General Mail Facility and a Vehicle Maintenance Facility. Also included will be enclosed carrier parking, a fueling island, and paved areas for parking, maneuvering and delivery.

The facility will process all classes of mail originating in its service area (the Rochester-Metropolitan area) and route it to other general mail facilities. It will also process the destinating volumes and the turnabout volumes (mail that both originates and destinates in its service area). The facility will process the mail for its Sectional Center Facility in Elmira, New York. It will also act as a Bulk Transfer Post Office for originating and destinating volumes, through its assignment with the Buffalo, New York Facility.

Mail will be distributed to the facility's local associate offices, and the General Mail Facility will act as its own associate office for its postal zone. As such, the facility will include a carrier section for these door to door deliveries. The facility will also serve as the main post office, providing lock boxes and drawers, a public service lobby and a self-service postal unit.

To fulfill these functions, various activities will be ongoing 24 hours a day. Employees will be assigned to one of three tours. The tours change at 7:00 A.M., 3:30 P.M. and 11:00 p.m. Tractor trailers and trucks deliver and pick up mail during each of these three tours. City delivery vehicles leave in the early morning, and return in the early afternoon. Parcel post vehicles leave in the late morning and return to the facility in the late afternoon. Special delivery vehicles operate between early morning and early evening. Firm mailers arrive and, after dropping off mail, immediately depart again. Prime delivery times are during the early morning and the late afternoon. (For specific times and volumes, please refer to table one.)

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

TABLE ONE
TRAFFIC VOLUME, TIME AND DIRECTION

TOUR ONE

375 EMPLOYEE VEHICLES
Arrive 11:00 p.m.
Depart 7:00 a.m.

15 TRACTOR-TRAILERS
Peak Hour 1:00 - 2:00 a.m.
7 east
8 west

20 HEAVY TRUCK
Peak Hour 6:00 - 7:00 a.m.
8 east
12 west

TOUR TWO

659 EMPLOYEE VEHICLES
Arrive 7:00 a.m.
Depart 3:30 p.m.

10 TRACTOR-TRAILERS
Peak Hour 1:00 - 2:00 p.m.
4 east
6 west

15 HEAVY TRUCKS
Peak Hour 1:00 - 2:00 p.m.
6 east
9 west

107 CITY CARRIER JEEPS
Depart 8:00 - 9:00 a.m.
Arrive 2:00 - 3:00 p.m.
50 east
57 west

34 PARCEL POST DELIVERY VEHICLES
Depart 9:00 - 10:00 a.m.
16 east
18 west

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

10 SPECIAL DELIVERY VEHICLES
Peak Hour 7:30 - 8:30 a.m.
Peak Hour 2:00 - 3:00 p.m.

30 FIRM MAILERS
Peak Hour 8:00 - 9:00 a.m.

TOUR THREE

580 EMPLOYEE VEHICLES
Arrive 3:30 p.m.
Depart 11:00 p.m.

35 TRACTOR-TRAILERS
Peak Hour 7:00 - 8:00 p.m.
16 east
19 west

52 HEAVY TRUCKS
Peak Hour 7:00 - 8:00 p.m.
21 east
31 west

34 PARCEL POST DELIVERY VEHICLES
Arrive 4:30 - 6:30 p.m.
16 east
18 west

10 SPECIAL DELIVERY VEHICLES
Peak Hour 7:00 - 8:00 p.m.

30 FIRM MAILERS
Peak Hour 4:30 - 5:30 p.m.

Exhibit G — Environmental Impact Assessment (EIA),
Filed 11-5-74 annexed to Stainton Affidavit.

3.2

As the postal service is primarily a delivery service, the most notable activity that will be apparent to the general public is the coming and going of mail carrying vehicles. Much of the site will be utilized for the parking, maneuvering, and docking of such vehicles.

The facility itself is quite large. The main building encompasses 371,196 sq. ft. of which 204,700 sq. ft. is workroom, and 26, 350 is platform. This figure also includes 61,630 sq. ft. of enclosed carrier parking. The buildings alone (the GMF, VMF & Guard Houses) cover 8.9 acres or 20% of the site. Paved areas for employee, public and delivery vehicle parking will cover 14.3 acres or 33% of the site. In total, 23.2 acres, or approximately 54%, of the site will be developed.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

SITE PLAN

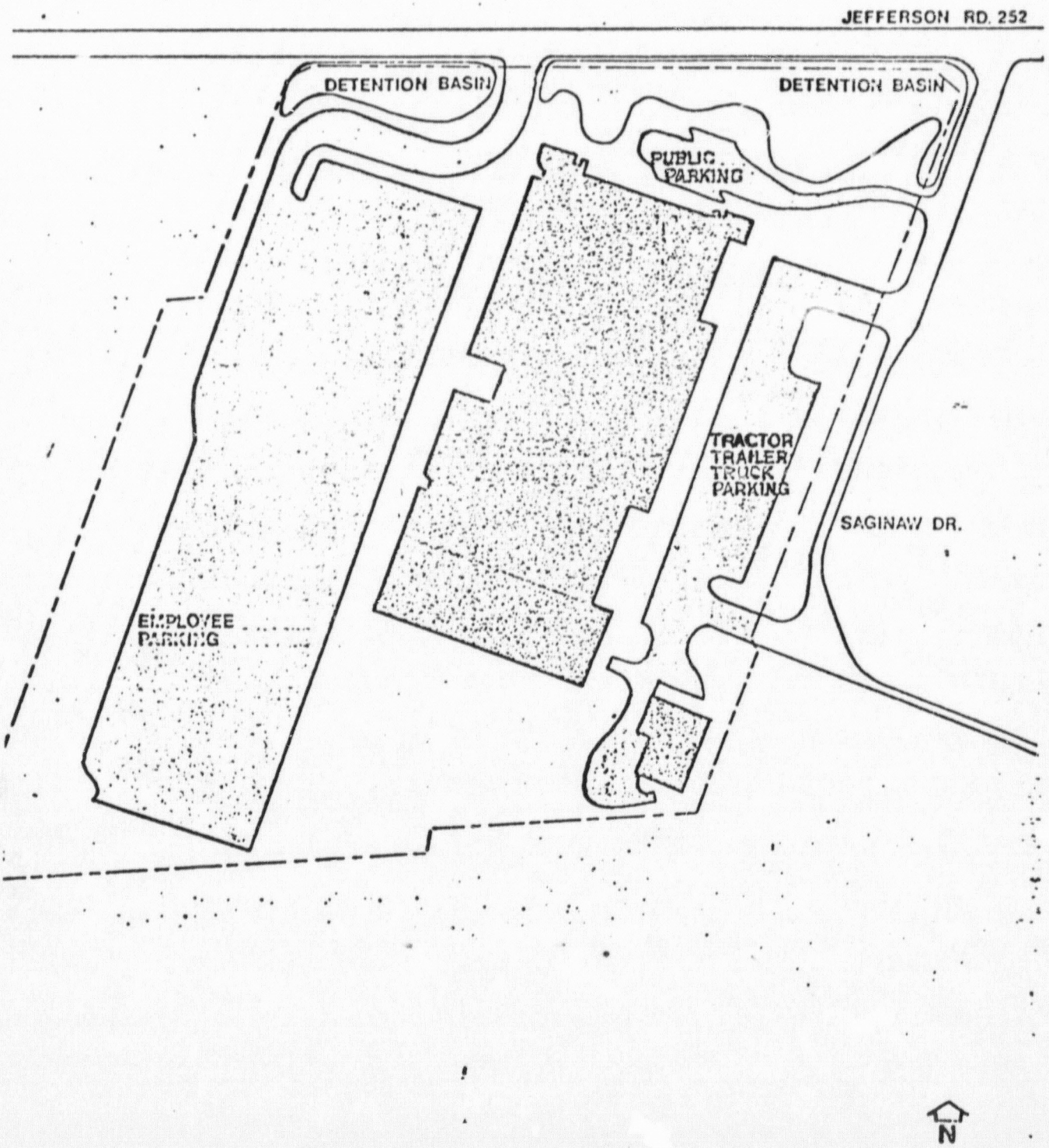

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART 4

PART FOUR
ENVIRONMENTAL IMPACT

ENVIRONMENTAL SETTING WITH ACTION

PHYSICAL

The proposed facility is unlikely to have any effect on the climate in the area. Heated or cooled air released from the facility will not be of large enough quantities to enact a significant change.

Construction activities can be expected to have an effect on air quality. Erosion from removal of ground cover, in conjunction with vehicular movement and wind could considerably increase the particulates in the air. Emissions from construction vehicles, primarily heavy diesels, could cause degradation of ambient air quality. By scheduling earth moving for those times when the soil is moist, some of the undesirable effects can be eliminated. Such effects will not have a significant impact on the overall environment, as they occur for a relatively short duration and will be mitigated over time.

The preservation of most of the trees on the site will help maintain air quality standards. Trees and grass aid in the retention of rain washed particulates, gaseous materials and wind blown dust. Unpaved areas of the site will be planted or sodded.

Internal combustion engines are one of the major sources of air pollution emissions. With proper maintenance and the mandatory use of air pollution devices, it does not appear that the air quality will suffer any degradation. Present land use and traffic patterns considered, the facility will not have a significant effect on the air quality in the area.

The suitability of the soil types found within the site can be generally stated for various types of construction (See Tables Two and Three). It is cautioned, however, that this is a generalized assessment. Engineering determinations will be made from site specific data. The results from the six initial test borings indicate that the site is well suited for a single story building.

TABLE TWO *
SOIL SUITABILITY

FOUNDATIONS FOR LOW BUILDINGS

APPLETON LOAM	Moderately high bearing capacity; Moderately low compressibility; Seasonal high water table.
HILTON LOAM	Generally high bearing capacity; low compressibility; seasonal high water table.
LAKEMONT SILT LOAM	Generally low bearing capacity; moderately high to high compressibility; prolonged high water table.

* Information taken from Soil Survey, Monroe County, New York; March 1973

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

TABLE THREE *
SOIL LIMITATIONS

STREET AND PARKING LOTS

APPLETON LOAM	Moderate: seasonal high water table 1/2 to one foot below surface.
HILTON LOAM	Moderate: seasonal high water table 1 1/2 to two feet below surface; slope.
LAKEMONT SILT LOAM	Severe: prolonged high water table; ponding.

* Information taken from Soil Survey, Monroe County, New York; March 1973

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4.2

The construction and operation of the facility requires the grading of a large portion of the site. Cut and fill activities will require a total earth moving of 154,000 cubic yards within the site, and the possible need for additional fill. This volume is sufficient to affect the water table and drainage and runoff patterns. The development of the site will increase runoff by roughly 200%. To compensate for this, a comprehensive drainage plan is an integral part of the facility design. Runoff will be directed to the existing swales that flank the site on the east and west sides. This water will drain into detention basins in the front of the site. These basins will hold not only site water, but runoff accumulated from upstream areas. The water will leave the site via the existing culverts under Jefferson Road. The water flow will be controlled by the volume of water these culverts can accommodate.

The water quality of the runoff is an issue of concern. During the winter months, the water will contain a fairly large quantity of the salt used for paved surface de-icing. As mentioned previously, Irondequoit Bay contains large amounts of chloride that have altered its characteristics. The site runoff will contribute to this situation, but not sufficiently. Any action taken to mitigate the effects of de-icing salts will have to be enforced for the whole drainage basin.

A lesser concern is the influx of petroleum-based substances into the drainage system. Gasoline and oil from the parking areas will be washed into Allen Creek. These are expected to be of small enough amounts so as not to cause a significant effect. However, the grease, oil and gasoline drippings from the Vehicle Maintenance Facility may be of large enough quantities to cause a problem. This will be alleviated by the use of grease traps or catch basins. The efficacy of these preventive measures is dependent upon their cleaning and maintenance.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

PART FOUR
ENVIRONMENTAL IMPACT

4.3

ENVIRONMENTAL SETTING WITH ACTION

BIOLOGICAL

The removal of the grass and weed vegetation during construction will destroy the habitat of the small mammals the site now supports. This will be a permanent effect, as once the site is developed there will be very few areas left that could support wildlife. It is unlikely that small animals would choose to occupy these areas due to the noise and activity of the facility.

The trees along the east and west property lines of the site will, for the most part, be preserved. These could possibly support some bird life, especially those varieties that can accustom themselves to human activity. More importantly, the trees can provide a windbreak, will retain airborne particulates, and are aesthetically pleasing. They can also function as a visual and partial acoustical barrier. Within the paved parking areas will be "islands" planted with trees and grass. This will replace the few trees that will have had to have been removed.

PART FOUR
ENVIRONMENTAL IMPACT

4.4

ENVIRONMENTAL SETTING WITH ACTION

CULTURAL

The site is of no known cultural or historical significance.

The proposed project site is located in an area zoned for industrial use, and the proposed facility is compatible with the light industry in the vicinity. As it is located in the northern part of Henrietta, near Rochester, the facility is not in conflict with agricultural areas or low density residential developments. However, there is a conflict of use between the facility and the medium density residential developments to the south. This can for the most part be resolved by a natural barrier of some type of evergreen. This would provide a year round visual barrier, a partial acoustical barrier, and would also retain particulates such as wind blown dust and gaseous materials. It is especially important that some sort of acoustical screen be provided, as deliveries will be made throughout the 24 hours the facility is in operation. This residential area is of a different use and character, and should be strictly separated from the industrial area.

The proposed building type and function are compatible with the neighboring industrial uses. The buildings in the area are visually unrelated to one another and the proposed facility will be similarly unrelated to the existing structures. However, if the building is well designed and well sited, it can become an aesthetically pleasing point in the otherwise visually uninteresting area.

The proposed facility, as part of its operation, will generate a substantially large volume of traffic. As discussed previously, trucks and tractor trailers will be delivering and picking up mail over a 24 hour period. Local delivery vehicles and carrier jeeps will be operating primarily during the daylight hours. The changing of employee tours will generate large volumes of traffic in short periods of time. There will also be the unscheduled traffic as the general public utilizes the facility.

In total, a large volume of traffic will be generated, but its impact will be mitigated by the fact that most of the traffic is spread out over a long period of time. Two of the employee tours change at non-peak traffic hours (at 3:30 p.m. and 11:00 p.m.). Although many vehicles are introduced into traffic, the initial low (non-peak) traffic level keeps the combined effect well below critical levels.

The tours that change at 7:00 a.m. may cause some difficulty. Prior to 7:00 a.m., traffic is still light and the incoming employees, which constitute the largest traffic group of approximately 659 vehicles, should encounter few problems. After 7:00 a.m., traffic starts rising to rush hour levels and the outgoing group, which is the smallest with approximately 375 vehicles, might have difficulty entering Jefferson Road, especially without the benefit of a traffic signal.

Carrier jeeps might also have some difficulty, as they depart for their routes between 8:00 and 9:00 a.m., also rush hour traffic. This seems to be a lesser problem, as only 107 vehicles are involved, and these are directed through the traffic light at Saginaw Road.

The facility is in a good location in relation to interregional and intraregional highway systems. This will improve when the Genesee Expressway and the outer loop are completed. This access has the additional benefit of providing the larger trucks and tractor trailers with routes that accept such heavy use. In no way will these larger vehicles disturb residential or potentially sensitive areas. The site is also in a good location for those trucks travelling to the Rochester-Monroe County Airport.

Dependent upon postal service hiring policies, jobs may be available to Town residents. The demographic and economic profiles indicate that Town residents are likely candidates for such jobs that would be available. Support services, such as restaurants, etc., might also benefit.

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

4.6

The proposed facility will have little impact on utilities such as gas, water, telephone, electric or sanitary sewer systems. The solution to the storm water problem is discussed in the above section dealing with the impact on the physical environment. Solid waste will be compacted and a contracted firm will haul it away.

Exhibit G — Environmental Impact Assessment (EIA),
Filed 11-5-74 annexed to Stainton Affidavit.

PART 5

Exhibit G — Environmental Impact Assessment (EIA),
Filed 11-5-74 annexed to Stainton Affidavit.

PART FIVE
ALTERNATES

5.1

SITE

Alternate locations for the proposed project were not within the realm of this study. The project site is the only one known, and therefore, evaluated.

ORIENTATION

As the basic building configuration was dictated by the function, the next level of possible alternatives concerned the building location and its orientation within the site. Several alternatives were explored as they related to the internal functioning of the facility. However, none of these alternatives would alter the environmental impact as stated above.

CIRCULATION

Several alternatives for traffic circulation within the site, as well as its relationship to the public roadway system were explored. The recommended solution most effectively minimized disruption of the present traffic flow patterns on the public roadway systems.

Exhibit G — Environmental Impact Assessment (EIA),
Filed 11-5-74 annexed to Stainton Affidavit.

PART 6

Exhibit G — Environmental Impact Assessment (EIA), Filed 11-5-74 annexed to Stainton Affidavit.

6.

PART SIX
CONCLUSIONS

1. This action will not have a significant adverse effect on the environment.

2. This action will not have a beneficial effect on the environment.

3. The effect of this action will not be environmentally controversial.

4. An Environmental Impact Statement will not be prepared.

Exhibit G — Environmental Impact Assessment (EIA),
Filed 11-5-74 annexed to Stainton Affidavit.

PART 7

FOOTNOTES

7.1

1. This figure is taken from the Bedrock Contour Map of Monroe County, New York; Monroe County Planning Board.

2. Data extracted from "Ground Water Resources of Monroe County, New York"; by Leggette, Gould and Dollen; 1935.

3. See "Runoff of De-Icing Salt: Effect on Irondequoit Bay, Rochester, New York"; by Bubeck, Diment, Deck, Baldwin and Lipton; March, 1971.

4. Refer to the test boring interpretations in a letter from Gentech Services, 28 May 1974.

Exhibit H – Postal Service Memoranda, dated 10-21-74 and 10-30-74 annexed to Stainton Affidavit.

Task Order # 105140-74-F-1-003
Rochester, New York - GMF & VMF

OCT 21 1974

Environmental Impact Assessment

Office of General Council

Gentlemen:

I concur in the finding of this Environmental Impact Assessment that the Environmental Impact Statement is not required. Your agreement with this conclusion would finalize this action. Attached are the only comments received from Review Elements of this office.

/S/

William F. Usher, Construction Manager
Eastern Region, Construction Management Division
Office of Administration & Program Management
Real Estate and Building Department

Encl: Environmental Impact Assessment Booklet
Comments from the following:
Headquarters FMSSC
J. P. Tice, General Manager - Environmental Services Division
Employee Relations Department

CC: Mr. S. Spadone
Mr. C. Cole
Mr. W. Hartegan - Technical Staff FMSSC
Mr. J. P. Tice, General Manager - Environmental Services Division
Employee Relations Department

Ex H.

BEST COPY AVAILABLE

Exhibit H — Postal Service Memoranda, dated 10-21-74 and 10-30-74 annexed to Stainton Affidavit.

UNITED STATES POSTAL SERVICE
Washington, DC 20260

OUR REF: HS:ro

DATE: OCT 30 1974

SUBJECT: Environmental Impact Assessment

TO:

William F. Usher
Construction Manager
Eastern Region, Construction Management
Division
Office of Administration & Program Management
Real Estate and Building Department
Room 8920

The decision that no environmental impact statement is required is a judgmental conclusion. On the basis of the study presented, there appears to be no reason to find that the decision is arbitrary.

James J. Wilson

James J. Wilson
Assistant General Counsel
Contracts and Property Division

Attachment

Ex H

Exhibit I – Letters, dated 2-11-74, 2-18-74, 6-25-74, 8-26-74
with attachments annexed to Stainton Affidavit.

MIDTOWN PLAZA
MIDTOWN HOLDINGS CORP
300 MIDTOWN TOWER
ROCHESTER, NEW YORK 14604
AREA CODE 716 454 2270

February 11, 1974

Mr. E. T. Klassen
U. S. Postal Service
Washington, D. C. 20260

Dear Mr. Klassen:

Since we have a major interest in Rochester and specifically the economic well-being of downtown Rochester, we were very surprised at the sudden, unannounced, non-participatory decision to move the Rochester Main Post Office. We feel your decision should be reconsidered in the best interests of all those affected by this decision.

A great deal of community opinion was generated when the proposal to move was initiated in 1969-1970. Local Postal Officials led us to believe the issue was dead due to strenuous objections from the community and the Chamber of Commerce. At no point since that time has there been any further discussion on the Main Post Office relocation.

In planning terms, there have been several deficiences that should be brought to your attention. These include the absence of referral of this matter to any of the planning agencies that service our community (City of Rochester Planning Commission; Monroe County Planning Council; and Genesee Finger Lakes Regional Planning Board); the lack of justification for relocating from a central site sitting on a major arterial link with immediate highway and railroad facilities, and the apparent disregard for the scattgration process that this relocation would serve to accelerate (eg: removal of minority employment opportunity, energy crisis, suburbanization).

Our community has undergone several recent major set backs in its development due to unilateral type

Ex I

Exhibit I — Letters, dated 2-11-74, 2-18-74, 6-25-74, 8-26-74 with attachments annexed to Stainton Affidavit.

agency decisions. I urge as a concerned citizen that this matter be re-evaluated in light of our broad community needs and growth objectives.

Sincerely,

MIDTOWN HOLDINGS CORP.

Angelo Chiarella
President

cc: Robert Isaacs
Real Estate and Building Dept.
U. S. Postal Service
475 L'Enfant Plaza W., S. W.
Washington, D. C. 02060

Sen. J. Javits
Sen. J. Buckley
Rep. B. Conable
Rep. F. Horton
Mayor T. Ryan
E. Freedman - City Manager
Worth Holder - Chamber of Commerce
Ann Taylor - City Planning Commission
Bill Upergrove - Monroe County Planning Council
Stuart Denslow - Genesee Finger Lakes Regional Planning Board

P. G. V route to B. Rice

Exhibit I — Letters, dated 2-11-74, 2-18-74, 6-25-74, 8-26-74 with attachments annexed to Stainton Affidavit.

Mailing address: 79 Saginaw Drive, Rochester, 14623 (716) 244-0120

February 18, 1974

Mr. E.T. Klassen
U.S. Postal Service
Washington, D.C. 20260

Dear Mr. Klassen,

Your decision to move the Rochester Post Office to a suburban location comes as a surprise and disappointment.

I do believe that major moves of important installations of this type should be carefully thoughtout and coordinated with local planning agencies.

Too many of our local industries have moved to the suburbs and have, thereby, discriminated against employees without automobiles. Further, we are doing our best to effect the exact opposite i.e. bringing industry, housing, schools and other institutions back into the city for the betterment of all.

I hope you will reconsider.

Yours truly,

Theodore J. Altier

TJA/plc

cc: Robert Isaacs
Real Estate and Building Dept.
U.S. Postal Service
475 L'Enfant Plaza W., S.W.
Washington, D.C. 02060

Sen. J. Javits
Sen. J. Buckley
Rep. B. Conable
Rep. F. Horton
Mayor T. Ryan
E. Freedman - City Manager
Worth Holder - Chamber of Commerce
Ann Taylor - City Planning Commission
Bill Updegrove - Monroe County Planning Council
Stuart Dunlop - Genesee Finger Lakes Regional Planning Board

EXHIBIT I

Exhibit I — Letters, dated 2-11-74, 2-18-74, 6-25-74, 8-26-74 with attachments annexed to Stainton Affidavit.

ROCHESTER AREA CHAMBER OF COMMERCE, INC.
55 ST. PAUL STREET • ROCHESTER, NEW YORK 14604 • TELEPHONE 716, 454-2220

ACCREDITED

ANGELO A. COSTANZA, President
GILBERT G. McCURDY, First Vice President
ERVIN F. LYKE, Second Vice President
WILLIAM G. vonBERG, Third Vice President
JOHN R. WILSON, JR., Treasurer
LESTER E. FRANKENSTEIN, Assistant Treasurer
H. SHELDON SMITH, Immediate Past President
WORTH D. HOLDER, CCE, Executive Vice President

June 25, 1974

Honorable Frank J. Horton
House Office Building
Washington, D. C. 20515

Dear Frank:

As you know, the Rochester Area Chamber of Commerce, Inc. has long been concerned with the future of Downtown Rochester. We have sought new developments and have tried to maintain current activities.

For your information, I am attaching a news release we have just sent out urging the U. S. Postal Service to reconsider its decision to move the Rochester Post Office out of Downtown Rochester, particularly when we realize the Henrietta town officials and others in Henrietta have opposed the location already selected for the new mail processing facility.

We offer our constructive help in any way required to keep the Rochester Post Office in our Central Business District.

Cordially yours,

Worth D. Holder, CCE
Executive Vice President

DW
Enclosure: News Release

cc: William Finn, Postmaster, Rochester
Elmer T. Klassen, Postmaster General, Washington
Robert E. Isaacs, United States Postal Service
Senator Jacob K. Javits
Senator James L. Buckley
Mayor Thomas P. Ryan, Jr.
Elisha C. Freedman - City Manager
Ann Taylor - City Planning Commission
William Uptegrove - Monroe County Planning Council
Stuart Denslow - Genesee Finger Lakes Regional Planning Board
Assemblyman Thomas R. Frey
Bernard F. Perry
Paul Haney - City Council
Angelo A. Costanza
William F. Freiert
Syl Novelli

EX I

"ROCHESTER MADE MEANS QUALITY"

Exhibit I — Letters, dated 2-11-74, 2-18-74, 6-25-74, 8-26-74 with attachments annexed to Stainton Affidavit.

NEWS

FROM HE
ROCHESTER AREA CHAMBER of COMMERCE, INC.
55 ST. PAUL STREET • ROCHESTER, N.Y. 14604

FOR ADDITIONAL INFORMATION CONTACT:

For Immediate Release
June 25, 1974

Angelo A.Costanza, President
263-3434

or

Worth D. Holder, Executive Vice President
454-2220, ext. 22

The Rochester Area Chamber of Commerce, Inc. today urged that the U.S. Postal Service reconsider its decision to move the Rochester Post Office out of Downtown Rochester.

In view of the opposition by the Town of Henrietta and several other Henrietta groups to a Henrietta location, a Rochester location seems more appropriate as Rochester DOES want the mail-sorting facility located in the City.

"We hope that the Postal Service will reassess its plans with a view toward adjusting its requirements to several sites that may be available in the City of Rochester," Chamber President Angelo A. Costanza stated.

Costanza added that, "Naturally, the Chamber is concerned over the psyohological effect the movement of a Downtown facility to the suburbs will have on the health of the Central Business District. The City is the central hub around which the economy of our metropolitan area revolves. It is important that facilities be attracted to, rather than away from, the City."

Costanza suggests that the Postal Service authorities and City Officials once more meet to discuss the situation in the hope that retaining the Postal facility in the City may be reconsidered. To this end the Rochester Area Chamber of Commerce, Inc. pledges its cooperation and efforts.

* * *

Exhibit I — Letters, dated 2-11-74, 2-18-74, 6-25-74, 8-26-74 with attachments annexed to Stainton Affidavit.

P.O. file

MONROE COUNTY PLANNING BOARD
WINSOR D. IRELAND CHAIRMAN

RECEIVED
AUG 28 1974
MIDTOWN PLAZA

August 26, 1974

Mr. Frederick Ray, Vice Chairman
Downtown Development Council
Rochester Savings Bank
40 Franklin Street
Rochester, New York 14614

Dear Mr. Ray:

The Monroe County Planning Board has become concerned of late about the apparent losses and changes of activity in the northern part of the Rochester Central Business District. This concern takes on renewed importance, when the critical role of downtown Rochester in the emerging plan for Monroe County is taken into account. The various announcements and stories about the future intentions of the United States Post Office and the AMTRAK Corporation have brought these concerns to a head; and in response to these proposals, the Planning Board would like to encourage a more comprehensive planning process than has transpired to date. It would be most unfortunate if the greater Rochester community were to lose an opportunity for what could be a laudatory solution to a difficult urban design problem because the parties involved all went their separate ways. These sentiments have been expressed in the enclosed resolution of the Board, which was unanimously adopted by the Board on August 14, 1974.

The main intent of this resolution is to get the parties together to explore the options available under a coordinated effort. In order to facilitate such a meeting, the Board has instructed its staff to be available for that purpose. As an important party to this question, we would be most appreciative if we could have your cooperation in initiating such a process. If, after reading the Board's resolution, you would like to pursue the matter further, the planning staff is ready to lend you such assistance as might be necessary. Please let us know your response, and do not hesitate to call if you have any questions or wish to discuss this further.

Thank you for your prompt attention to this matter.

Sincerely,

William E. Uptegrove/jb

William E. Uptegrove
Director of Planning

WEU:jb
Encl.

Ex I

Exhibit I — Letters, dated 2-11-74, 2-18-74, 6-25-74, & 26-[illegible] with attachments annexed to Stainton Affidavit

DISTRIBUTION LIST:

Letters sent to:

Postmaster William Finn
Mr. Robert Aex
Mr. Roger Lewis
Mrs. Ann B. Taylor
Mr. John Stainton
Mr. Frederick Ray
Mr. Worth Holder
Mr. Alexander J. Kopczynski

Carbon copies sent to:

Hon. Frank J. Horton
Hon. Barber Conable
Hon. Jacob K. Javits
Hon. James L. Buckley
Postmaster General E. T. Klassen
Assistant Postmaster General Robert E. Isaacs
Ms. Hetty Jean Crapsey
Mr. Lucien Morin
Mr. Joseph Ferrari
Mr. Eugene Molter
Dr. Stuart O. Denslow
Mr. David A. Watts
Mr. Kurt Weissheimer
Mr. Nathan J. Robfogel
Mr. Elisha Freedman
Mayor Thomas Ryan
Mr. Angelo J. Chiarella

Exhibit I — Letters, dated 2-11-74, 2-18-74, 6-25-74, 8-26-74 with attachments annexed to Stainton Affidavit.

Resolution on Amtrak Station Location and new U. S. Postal Regional Facility

Whereas, the present Amtrak station and U. S. Postal Service main office are located on adjacent parcels in the Central Business District of the City of Rochester; and

Whereas, the location of both are immediately adjacent to all types of surface transportation and support facilities; and

Whereas, the Central Business District of Rochester should be the location of all unique central functions; and

Whereas, there is land available for expansion adjacent to both of these existing facilities; and

Whereas, the potential for an integrated design of these two facilities offers a unique opportunity for long-range solutions to the future development of this portion of the Central Business District, thus accomplishing the aims of all parties involved; therefore

BE it resolved that the Monroe County Planning Board urges reconsideration of any work currently under way in planning of new postal and rail facilities not located in the Central Business District; and

BE it further resolved that all parties concerned arrange a meeting at the earliest possible date to consider a plan for this portion of the Central Business District area that will allow these facilities to expand in their present locations, and also to discuss at said meeting a possible joint-effort on the part of the City of Rochester, Amtrak, the U. S. Postal Service and other interested parties for the construction of integrated facilities.

Exhibit J – Letters, dated 8-16-74 and 3-18-74 annexed to Stainton Affidavit.

OFFICE OF THE POSTMASTER GENERAL
Washington, D.C. 20260

August 16, 1974

Dear Senator Javits:

Thank you for your July 22 correspondence on behalf of Mr. Nathan J. Robfogel, Chairman of the Rochester City Planning Commission/Bureau of Planning, regarding the location of the new Rochester General Mail Facility.

Real Estate representatives from both the Corps of Engineers and the Postal Service made visits to the City of Rochester Urban Renewal Office, Planning Commission and Engineering Department during the period from January to October 1973.

In our quest for possible sites of approximately 36 acres for this facility, five were considered within the downtown area. Two were too small, one had an environment improper for our use, and the other two (Urban Renewal land) required excessive site preparation expense and were poorly located for our purposes. If the planned Genessee Expressway had not been diverted from the Inner Loop, we would have given further consideration to the Urban Renewal sites.

In order that customer services for the downtown area be maintained, our plan is to provide a new finance/lockbox and carrier station near the old Post Office.

The above facts will provide Mr. Robfogel with an understanding of why we did not locate the general Mail Facility in the downtown area.

Sincerely,

John C. Lintner
Senior Representative
Government Relations Department

Honorable Jacob K. Javits
United States Senate
Washington, D.C. 20510

Ex J

Exhibit J — Letters, dated 8-16-74 and 3-18-74 annexed to Stainton Affidavit.

THE POSTMASTER GENERAL
Washington, DC 20260

March 18, 1974

Dear Congressman Conable:

Thank you for your letter of February 15, concerning plans for the new post office at Rochester.

The new office is being designed for maximum mail processing efficiency. This can best be assured by locating the office away from the congestion of the central business area. We feel this will assure a better level of service for all the people whose mail is processed at the office. Nevertheless, a post office with full lobby services will continue to be located in the business district.

I understand postal representatives visited your office February 28 in order to discuss this matter in greater detail. I hope you found their visit helpful. In addition, Assistant Postmaster General Robert Isaacs went to Rochester on March 15 to meet with city officials there and discuss the subject with them.

Sincerely,

E. T. Klassen

E. T. Klassen

Honorable Barber B. Conable, Jr.
House of Representatives
Washington, D.C. 20515

Ex J

AFFIDAVIT OF STUART I. BROWN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, sworn to on 1-13-76.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Plaintiffs,

vs.

U. S. POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL,

Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE)
CITY OF ROCHESTER) SS:

Stuart I. Brown, being duly sworn, deposes and says:

1. I am a Deputy Director, Genesee-Finger Lakes Regional Planning Board, "Regional Planning Board". I make this affidavit in support of the application of the City of Rochester and the Regional Planning Board for a Preliminary Injunction. I am familiar with the facts hereinafter stated, based upon my personal knowledge of various correspondence, meetings and documents concerning the subject matter of this action.

2. The Regional Planning Board exists pursuant to Article 12-B of the New York General Municipal Law.

3. The Regional Planning Board has been designated the areawide clearinghouse for the eight county area of Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne and Yates Counties, pursuant to the mandate of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. §4233) as implemented by Office

of Management and Budget Circular A-95 [hereinafter referred to as "A-95 Review"]. The A-95 Review procedures and policies are set out fully in paragraphs 21 to 35 of the Complaint herein. In summary, the mandate of the Intergovernmental Cooperation Act is that all viewpoints shall be fully considered in planning federal development programs and that all projects be implemented in accordance with the so-called A-95 rules and regulations. Those A-95 procedures require: (1) that all federal agencies consult with areawide clearinghouses at the earliest practicable stage of the federal project and (2) that all federal agencies obtain information sufficient to determine that the federal plan is consistent with and compatible with state, area and local development plans.

4. Upon information and belief, the Regional Planning Board first learned of the U.S. Postal Service's "Postal Service" intent to relocate the Rochester main post office from downtown to the proposed new location in Henrietta in August of 1975.

5. Despite the requirement that the decision by the Postal Service to relocate the main post office be submitted to A-95 Review before its implementation, the Postal Service totally ignored the A-95 Review process and instead, indicated to the Regional Planning Board that it did not intend to file an Environmental Impact Statement (EIS) by its filing of an Environmental Impact Assessment (EIA), which was not submitted to the Regional Planning Board until July of 1975.

6. Upon information and belief, the contract for the construction of the Henrietta Postal Service facility was entered

into on August 8, 1975 (See: an article in the Rochester Times-Union, dated August 9, 1975, attached hereto as "Exhibit A").

7. Immediately upon learning of the Postal Service's entering into a construction contract for the Henrietta facility, the Regional Planning Board, together with the Monroe County Planning Board, the City of Rochester Planning Commission and other local governmental officials began a coordinated effort to explore the options available and to attempt to have the A-95 Review procedures and the project review required of the Postal Service under the National Environmental Policy Act [NEPA] complied with.

8. In August of 1975 our office requested that the Postal Service provide specific and detailed information to the Regional Planning Board necessary to initiate the A-95 Review. (See: letter dated August 5, 1975 from Margaret Ely to George A. Glover, annexed hereto as "Exhibit B"). On September 10, 1975, the Postal Service by J.F. Kenyon, General Manager, Real Estate Division, responded by providing only the most cursory information which certainly was not sufficient to initiate the A-95 Review procedures. (See: letter dated September 10, 1975, annexed hereto as "Exhibit C").

9. On September 22, 1975, under established procedures, the preliminary A-95 Review evaluation was sent to the Commissioner of Community Development of the City of Rochester.

10. On October 29, 1975 the Regional Planning Board again addressed several questions to the General Manager of the Postal Service's Real Estate Division - Eastern Region for pur-

poses of a "belated A-95 Review". Among other things, the Regional Planning Board requested a justification of the need for the new Postal Service building in Henrietta; a description of the site selection process; a report of the coordination which took place with the County of Monroe, City of Rochester and Town of Henrietta prior to project commitment; the proposed disposition of the existing postal facility on Cumberland Street; a description of the service area; the construction schedule and site plan for the new facility. Although the Postal Service had agreed to supply this information in early October, 1975, as of October 29, 1975, it had not furnished same.

11. Pending receipt of the foregoing information, the Regional Planning Board prepared a Project Review Report, annexed hereto as "Exhibit D" which outlined the concerns of the Board and recommended that approval of the Postal Service's action be denied until those outstanding issues were resolved.

12. Pursuant to the A-95 process, recommendations on the Postal Service's project were elicited from the County of Monroe Department of Planning. On November 7, 1975 a report prepared pursuant to the A-95 Review by Don B. Martin recommended that the project be disapproved until the Postal Service provided certain basic information regarding the effects of abandoning the downtown Rochester general mail facility; the future use of the present downtown pos' office; the feasibility of renovation or redesigning the downtown post office. The report of the County Planning Department is annexed hereto as "Exhibit E".

13. The Rochester City Planning Commission, on November

13, 1975 and as part of its input into the A-95 process, identified the following concerns: the negative effect on employment opportunities and on vitality of downtown Rochester; the disposition of the existing facility; and the lack of study feasibility of renovating or redesigning the downtown post office. These concerns are expressed in the letter and report dated November 13, 1975 from Ann B. Taylor to Dr. Stuart Denslow, annexed hereto as "Exhibit F".

14. On November 13, 1975 the Postal Service, by letter from Mr. J.F. Kenyon (Kenyon), belatedly attempted to address some of the A-95 Review concerns and to provide that information which had been promised in early October, 1975. The Postal Service in this letter failed again to supply sufficient information for a proper A-95 Review on such subjects as the effect the move would have on present Rochester main post office employees. (See: letter dated November 13, 1975 from Kenyon to Margaret Ely, annexed hereto as "Exhibit G").

15. The Regional Planning Board, by letter dated November 19, 1975 notified defendant Benjamin Bailar as follows:

> "Further, not only was this project not submitted for review until requested by the Regional Planning Board, but also repeated requests for additional essential information have been ignored. The failure of the Postal Service to comply with the Office of Management and Budget Circular A-95 and the National Environmental Policy Act of 1969, section 102(c) cannot be condoned." (See: letter dated November 19, 1975 from Stuart O. Denslow to Benjamin Bailar, annexed hereto as "Exhibit H")

16. Upon information and belief, the Postal Service violated both the mandate and intent of A-95 Review procedures

by not submitting the required information to the Regional Planning Board necessary for its review under A-95, until several months after the construction contract was let for the proposed Henrietta facility, and then by submitting inadequate information for the Regional Planning Board to make the required review under A-95.

17. The Defendants' proposed action is contrary to the Genesee-Finger Lakes Region Comprehensive Regional Development Plan ("Plan"), Exhibit "I" which will be given to the Court and defendants on the return day of this motion. Specifically, the following formulations contained in said Plan were totally ignored by the acts of the Postal Service which are the subject of this action:

> "A revitalized, dynamic central city is important to the entire region. On this basis, it is vital that such region - serving "one-of-a-kind" facilities be expanded and improved. At the same time, attempts to relocate such activities out of the city must be strongly discouraged."
> (Plan at 28).

> "Region - serving and/or one of a kind uses such. as the central post office should be discouraged from relocating outside the city. The fiscal responsibility for supporting such uses should be shared by the entire regional community.
> (Plan at 140).

18. Defendants further failed to consider the "ripple effect" of their proposed action upon the City of Rochester, that such action may in fact contribute to an obvious undesirable and social inequities. (Plan at 28-29). Defendants also disregarded the Plan's emphasis that "[P]riority attention should be given to the City of Rochester" and that "[i]t is essential that public policies focus on the importance of [the] city. . . as [a] desir-

able place in which to live". (Plan at 58). In addition, Defendants failed to consider the economic impact on persons presently employed at the Post Office. (See Plan at 112). Moreover, Defendants failed to take into account the realities of the present regional public transportation system, which "exert[s] a major influence on the city's economy, its fiscal stability, neighborhood and residential environment and social composition". (Plan at 139). Finally, Defendants failed to consider the principal community development recommendation affecting the City of Rochester. "Public and private actions should be coordinated and directed toward improving the vitality of Rochester and creating a strong metropolitan center". (Plan at 140).

20. I submit that the facts and circumstances set forth above clearly establish that the Postal Service as wholly failed to comply with the letter and the intent of the A-95 procedures. Therefore, and for the reasons set forth in the Complaint, the affidavit of John Stainton, and plaintiff's memorandum of law, I respectfully submit that plaintiffs are entitled to the preliminary injunction herein requested.

Stuart I. Brown

Sworn to before me this 13th day of January, 1976.

Notary Public

LARRY A. [illegible]
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 19 76

Exhibit A – Newspaper Article from Rochester Times-Union annexed to Brown Affidavit.

4B The Times-Union Thur., Aug. 7, 1975

Post Office To Cost $12 Million

Henrietta's new post office will cost $12,195,000.

The U.S. Postal Service yesterday awarded the contract for that amount to L.E. Cesse Brothers, Inc. of Rochester to build the 400,559-square-foot building on the south side of Jefferson road at the intersection of Saginaw Drive.

The building is expected to be completed by summer 1977. It's designed to improve mail distribution and transportation among the area's 123 post offices.

An 18,072 square-foot vehicle maintenance center also will be built on the 32-acre site.

Architect and engineer for the facilities is the T. Gammon Partnership of Grand Island. On-site inspections will be done by the Rochester architecture and engineering firm of Barnard and May Beck.

tc - Rutherford Chronicle

EXHIBIT "A"

BEST COPY AVAILABLE

Exhibit B – Letter, dated 8-5-75 annexed to Brown Affidavit.

GENESEE/FINGER LAKES REGIONAL PLANNING BOARD
Suite 500, Ebenezer Watts Building, 47 South Fitzhugh Street, Rochester, New York 14614
716-428-5640

ANNE E. AVERY, Chairman
PHILIP POWLEY, First Vice Chairman
ARTHUR B. EDDY, Second Vice Chairman
HENRY W. WILLIAMS, JR., Treasurer
VIRGINIA T. DIEBOLT, Secretary

STUART O. DENSLOW, Executive Director

August 5, 1975

Mr. George A. Glover, Acting District Manager
Empire District
United States Postal Service
P.O. Box 568
Rochester, New York 14602

Dear Mr. Glover:

It has come to our attention through the local news media that the Postal Service is about to start construction of the new General Mail Facility in Henrietta. As the areawide clearinghouse for projects subject to OMB Circular A-95, we feel that this project should have been submitted for A-95 processing under Part II of the Circular.

Circular A-95 provides the most effective mechanism for coordinating development actions by all levels of government. Therefore, would you please supply us with the necessary project information (size, scheduling, cost, justification for site, etc.) to review the project in accordance with OMB Circular A-95. A copy of the environmental assessment was requested and received by this agency.

This information should be received as soon as possible so that the project can be considered at the next Regional Planning Board meeting. Notification should also be made to the State Planning and Development Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224.

Your cooperation in this matter is appreciated. If you have any questions, please do not hesitate to call either myself or Mr. Larry Stid.

Sincerely,

/s/ Margaret Cly

Margaret Cly
Associate Planner
Planning Assistance

EXHIBIT "B"

Exhibit C – Letter, dated 9-10-75 annexed to Brown Affidavit.

RECEIVED SEP 2 91975

RECEIVED
SEP 12 1975
GEN. REG.
PLANNING BD.

UNITED STATES POSTAL SERVICE
EASTERN REGION
P.O. BOX 8501
PHILADELPHIA, PENNSYLVANIA 19101

September 10, 1975

Genessee/Finger Lakes Regional Planning Board
Suite 500, Ebenezer Watts Building
47 South Fitzhugh Street
Rochester, New York 14614

Attn: Ms. Margaret Ely
Associate Planner

Dear Ms. Ely:

Reference is made to your correspondence of August 5, 1975 directed to the Empire District. That correspondence was referred to our Washington Headquarters, and in turn referred to this office for reply. Unfortunately I was unable to get all of the information together to forward a letter on Monday as promised. However, immediately upon receipt of the information, I did telephone your office and gave the pertinent data to Mr. Larry Stid.

This letter is in confirmation of that information data.

Building Size - 356,000 square feet gross

Construction Cost - $12,195,000

Site Size - 1,894,424 square feet

Site Cost - $1,656,620

The site selection procedure is rather involved, and it includes an analysis of sites considered based upon the price of the land, the cost of site preparation and the effect of the location on transportation costs. All of these factors must be taken into consideration to arrive at the most sensible location from a cost standpoint, including its effect on continuing operational costs.

Our analysis of the sites considered indicated that the selected location is best suited to our needs.

J. F. Kenyon
General Manager
Real Estate Division

Environmental Assessment is on file

EXHIBIT "C"

Exhibit D – Project Review Report annexed to Brown Affidavit.

GENESEE/FINGER LAKES REGIONAL PLANNING BOARD
Suite 500, Ebenezer Watts Building, 47 South Fitzhugh Street, Rochester, New York 1461
(716 428 56

ANNE E. AVERY, Chairm
PHILIP ROMLEY, First Vice Chairm
ARTHUR B. EDDY, Second Vice Chairm
HENRY W. WILLIAMS, JR., Treasur
VIRGINIA T. DIEBOLT, Secretar

STUART O. DENSLOW, Executive Direct

PROJECT REVIEW REPORT

TO: Regional Planning Board

FROM: Regional Development Committee and Staff

Project Number:	GFL-75-109
Project Description:	General Mail Facility, Henrietta
Sponsor:	United States Postal Service
Estimated Cost:	$14,089,424

RECOMMENDATION:

The United States Postal Service is constructing a General Mail Facility in the Town of Henrietta. During the belated A-95 review, the following specific concerns were raised concerning the project:

1) The apparent lack of coordination between the Postal Service and the local municipalities - City of Rochester, County of Monroe and Town of Henrietta.

2) The lack of information concerning the site selection process and the reasons for selecting the specific site which was acquired.

3) The justification for spending nearly $40,000 per acre for undeveloped land when sites with similar access amenities could be acquired for substantially less money.

4) The effect of the Postal Service relocation on employment opportunities for City of Rochester residents.

EXHIBIT "D"

Exhibit D — Project Review Report
annexed to Brown Affidavit.

5) The disposition of the existing facility in Rochester has not been addressed.

In addition, the Regional Planning Board endorses the comments made by the Monroe County Planning Board and the City of Rochester Planning Commission.

Further, not only was this project not submitted for review until requested by the Regional Planning Board, but also repeated requests for additional essential information have been ignored. The failure of the Postal Service to comply with the Federally mandated review procedures required by Office of Management and Budget Circular A-95 and the National Environmental Policy Act of 1969, section 102 (c) cannot be condoned.

Therefore, the following recommendations are made concerning the project:

1) Approval be denied until the outstanding issues are resolved.

2) The City of Rochester (or other appropriate local government) should take appropriate action such as a preliminary injunction to stop action on the project until the Postal Service complies with required review procedures, thus giving the City the opportunity to assess the project's impact.

3) Due to the extraordinary circumstances surrounding this review, copies of these comments shall be forwarded to the Postmaster General, Congressman Frank Horton, Congressman Barber Conable, Mayor Thomas Ryan, Supervisor Robert Oakes, County Legislature President Joseph Ferrari, City Manager Elisha Freedman, County Manager Lucien Morin and the City/County Delegation to the Regional Planning Board.

Exhibit E – Letter, dated 11-7-75 annexed to Brown Affidavit.

County of Monroe

NEW YORK

DEPARTMENT OF PLANNING
301 COUNTY OFFICE BUILDING
ROCHESTER, NEW YORK 14614

DON B. MARTIN, DIRECTOR

TELEPHONE:
(716) 428 5461

November 7, 1975

Mr. Stuart O. Denslow, Executive Director
Genesee/Finger Lakes Regional Planning Board
Suite 500 - Ebenezer Watts Building
47 South Fitzhugh St.
Rochester, New York 14614

RE: GFL-75-109
Monroe County
General Mail Facility

Dear Mr. Denslow:

The staff of the Monroe County Department of Planning has reviewed GFL-75-109, which pertains to the construction of a new general mail facility by the U. S. Postal Service in the Town of Henrietta, replacing the existing general mail facility in downtown Rochester. We recommend that this project not be approved until the U. S. Postal Service provides the basic information which is necessary to answer the following questions:

1. What will be the effects of abandoning the downtown Rochester general mail facility on its immediate environment, on employment opportunities downtown, and on the general vitality of the City of Rochester as the core of our metropolitan area?

2. What use will be made of the present post office in downtown Rochester once its use as a general mail facility is discontinued?

3. Is it feasible to renovate or redesign the downtown post office so that it may continue in use as a general mail facility, or is a new facility required because of financial reasons or because the present facility cannot be redesigned to meet the operational requirements of a general mail facility?

In order to conduct an adequate review of this matter under the A-95 process, we need basic information to answer the above questions. Maggie Ely of your staff requested a meeting with representatives of the Postal Service to address the above questions as well as other matters, and representatives of our office and the Rochester Department of Community Development were to be invited to attend that meeting. However, it is my understanding that the Postal Service refused to participate in such a meeting, indicating instead that it would submit a written statement on its efforts to coordinate its

EXHIBIT "E"

Exhibit E — Letter, dated 11-7-75
annexed to Brown Affidavit.

proposal with various interested parties. This communication has not yet been received, and, in consequence, we do not have the information which is required for an acceptable review of this project. In the absence of such information, we have no alternative other than to recommend disapproval of the proposed facility until the necessary information is supplied.

Several other factors give us cause to recommend disapproval until the need for the Henrietta location is satisfactorily demonstrated. The factors are as follows:

1. The proposed facility is contrary to the Monroe County Comprehensive Plan and the Comprehensive Regional Development Plan, both of which would retain such a one-of-a-kind facility in the downtown location in order to maintain the vitality of our core city.

2. The environmental assessment which was prepared for the proposed facility is inadequate, and in our judgement the assessment fails to conform with the intent of the National Environmental Policy Act. The assessment confined its investigation to an analysis of the environmental effects of the construction of a relocated facility on a specific site in the Town of Henrietta. We agree with the finding that the construction will have relatively minor effects on that particular site in question and the surrounding lands. That, however, is not the most important question of environmental impact. The most important question, in our opinion, is the economic, social, and environmental effect on downtown Rochester caused by the relocation of the postal facility. A full environmental assessment must address that question in terms of the removal of this facility from its present location and the environmental impact this relocation will have on the area surrounding the vacated site. The assessment explicitly states that it is not concerned with that problem, nor with any other alternatives to the proposed action of the Postal Service, and, on this basis, the assessment reaches the conclusion that a full environmental impact statement is not necessary. This, we believe, is a totally inadequate response to the intent and purposes of the National Environmental Policy Act.

3. The Postal Service may have violated certain procedural requirements by not submitting the environmental assessment for review under the A-95 process and by not going through the current A-95 review until construction of the proposed facility had already started.

4. Serious reservations on the proposed facility have been expressed by the two municipalities most directly affected, namely the City of Rochester (through its Planning Commission) and the Town of Henrietta (through its Supervisor). Serious reservation has also been expressed by the Monroe County Planning Board.

Sincerely,

Don B. Martin
Director of Planning

DBM:RBD:ar

cc: Genesee/Finger Lakes Monroe County Members

Exhibit F – Letter and Report, dated 11-13-75 annexed to Brown Affidavit.

340 City Public Safety Building
Civic Center Plaza
Rochester, New York 14614
Telephone: 454-4000 ext. 53
428-6988

November 13, 1975

Dr. Stuart Denslow, Executive Director
Genesee/Finger Lakes Regional Planning Board
Suite 500, Ebenezer Watts Bldg.
47 South Fitzhugh Street
Rochester, New York 14614

Re: GFL-75-109
Monroe County
General Mail Facility

Dear Dr. Denslow:

The staff of the Bureau of Planning has reviewed your referral, GFL-75-109, concerning the construction of a new general mail facility by the U.S. Postal Service in the Town of Henrietta, replacing the existing general mail facility in downtown Rochester. We are also in receipt of a copy of a letter to you from Don Martin, Director of the Monroe County Dept. of Planning, such letter expressing disapproval of this project.

We are in complete agreement with the issues and questions stated in Mr. Martin's letter, and have re-iterated the three major concerns on your referral form, enclosed herewith. In addition, the City Planning Commission, at its meeting of November 10, 1975, adopted a resolution whereby the Commission went on record as being opposed to to the relocation of the general mail facility from downtown Rochester to the Town of Henrietta. A copy of the resolution is enclosed.

I believe this is the material you need in order to complete your review of GFL-75-109. If you wish to discuss this further, please contact me or Bob Titus. After Monday, November 17, 1975, our new number is 428-6988.

Very truly yours,

Ann B. Taylor

Ann B. Taylor
Director of Planning
Bureau of Planning

ABT:lpa
Enc.
cc: Don Martin
Beverly Vaughan

EXHIBIT "F"

ROCHESTER CITY PLANNING COMMISSION/BUREAU OF PLANNING

Exhibit F — Letter and Report, dated 11-13-75 annexed to Brown Affidavit.

RECEIVED SEP 2 91975

GENESEE/FINGER LAKES REGIONAL PLANNING BOARD
Suite 500, Ebenezer Watts Building, 47 South Fitzhugh Street, Rochester, New York 14614
716 428-5540

ANNE E. AVERY, Chairman
PHILIP ROWLEY, First Vice Chairman
ARTHUR B. EDDY, Second Vice Chairman
HENRY W. WILLIAMS, JR., Treasurer
VIRGINIA T. DIEBOLT, Secretary
STUART O. DENSLOW, Executive Director

TO: Planning Assistance Division

FROM: Rochester City Planning Commission

DATE: November 13, 1975

PROJECT: Comments/Concerns - Project GFL-75-109

The above project notification has been reviewed by our agency and the following comments are submitted as input to the A-95 process.

I. Review has identified the following concerns (list and discuss briefly)

1. Negative effect on employment opportunities and on vitality of downtown Rochester.
2. Disposition of the present downtown facility when its use is discontinued.
3. Lack of study feasibility of renovating or redesigning the downtown post office to continue its usefulness.

II. As a result of these concerns, an information meeting with the applicant is requested X Yes _____ No

III. The following comments are submitted in support of the project.

1.
2.
3.

IV. ~~No~~ ~~concerns~~ ~~recommendations~~ ~~interest~~ ~~comment~~ ~~project~~

Submitted By Ann B. Taylor Agency Bureau of Plann-ing Date 11/13/75

Ann B. Taylor, Director

F

EXHIBIT "G"

BEST COPY AVAILABLE

Exhibit G -- Letter, dated 11-13-75 annexed to Brown Affidavit.

UNITED STATES POSTAL SERVICE
EASTERN REGION
P.O. BOX 8601
PHILADELPHIA, PENNSYLVANIA 19101

November 13, 1975

RECEIVED
NOV 17 1975
GENESEE/FINGER LAKES
REGIONAL PLANNING BOARD

Ms. Margaret Ely
Associate Planner
Genesee/Finger Lakes Regional Planning Board
Suite 500, Ebenezer Watts Building
47 South Fitzhugh Street
Rochester, NY 14614

Dear Ms. Ely:

This office apologizes for the delay in getting the required information relative to the construction of the General Mail Facility at Henrietta, New York. You will recall in our earlier conversations that the initial studies relative to sites available, etc., have been made by the Corps of Engineers which was prior to June of 1973. The required information is assembled from data obtained at various locations.

Reference is made to your most current correspondence of October 29, 1975, and the attempt is made to follow your requirements (a) through (f) in order. The items are as follows:

(a) Attached is a copy of the General Planning Assumptions with regard to the facility. This office has reviewed those assumptions, and it is believed that the only factor missing is the number of facilities directly served by this facility. From this unit, 129 Post Offices are served in the State of New York consisting of communities surrounding Rochester.

Please note in Section I that page 2 identifies total areas involved with qualifications relative to non-operating space. You will note on that page that the approx site required is identified as 36.1 acres. It is very rare, both from standpoint of the Postal Service's needs and the proper landscaping, etc. that should be a part of a facility of this size, that the site can be confined to just the operating area. This accounts for the difference in site size in the actual purchase which was approximately 44 acres. On the following pages, you will note that the Postal Service in its study of requirements goes into great detail and identifies each and every area to effect its summary of the Postal requirement.

EXHIBIT "G"

(b) Although this particular site selection was made by the U. S. Army Corps of Engineers, their procedure is very similar to that now in effect. It would not be expected that our most recent procedures could have produced any different result. Obviously, in serving the number of Post Offices involved, consideration must be given to the transportation necessary to receive and deliver mail from the General Mail Facility. All of the vehicle runs involved are computerized, and the computer is pre-programed to find the ideal center from which all transportation runs would total into the least truck miles.

This is a guideline and not gospel. The computer does not take into consideration the actual conditions of the area i.e., interstate routes, interchanges, existing traffic patterns, etc. However, it does allow the Postal Service to evaluate differences in transportation costs between one viable site and another.

Beginning with this premise sites are identified, and within those identified sites, the other factors such as site development cost, building construction cost, etc. are considered along with the transportation factor. In every case, the Postal Service concerns itself with the effects that such development would have on local communities. It is our desire to attempt to place our facilities, and particularly major facilities, in areas where they would produce the least undesirable impact. After a thorough study of all of the factors involved, the Postal Service determined that the best site for this facility was that selected in Henrietta Township.

(c) Contacts with the City of Rochester and the Town of Henrietta relative to site selection was begun early in 1973. The Postal Service has attempted to obtain details of those meetings, but to date they have not been identified in detail. They were concerned with the city's offer of a site in Rochester that was not acceptable because of location and excessive site improvement costs. The preferred area for the project was the area South of Rochester proper in the Towns of Henrietta, Gates and Brighton. Town Officials of these localities were contacted during the investigation of sites by the Corps of Engineers.

The then Assistant Postmaster General, Real Estate and Buildings Department, was in personal contact with Mayor Thomas Ryan and Mr. Morin, County Manager. On March 15, 1974, at the request of City Officials, Rochester, New York, Mr. Isaacs and members of his staff attended a meeting which was set for 1 P.M. to discuss the new Postal facility. It is understood that the Mayor was unable to attend and that Mr. Freedman, City Manager, was not available throughout the entire meeting. The discussion that followed established that there was no other site offered by the city. The discussion centered around why the Postal Service needed 36 acres, reasons for moving out of the center of town, operations of a new facility, and the services that would remain downtown.

It is known that several meetings, both at Henrietta Township and in Washington, DC, were held with Officials of Henrietta Township. As in most instances, communities are concerned with the fact that land being used by the Postal Service for facilities of this size is being removed from the tax rolls. Other sites in Henrietta?

Not the issue As far as can be determined, there was nothing presented at these meetings that would indicate that the Postal Service was in error in its efforts to adequately service the entire operating area.

(d) In answering your question relative to the proposed disposition of the existing Postal facility, one must also consider that this is likely the real concern of the downtown area and perhaps the Chamber of Commerce. Whenever the Postal Service locates the Mail Processing Facility on the periphery of a community of the size of Rochester, it is always conscious of the fact that the downtown area must continue to have the same financial and customer services that it has been accustomed to. A facility adequate to serve the downtown area will be available to the community. It will be an improved facility that will offer better service to the downtown community. Not the issue

The existing Postal-owned building most certainly will be surplus to the needs of the Service and as such will be offered for disposition under a standard procedure. Federal Government Agencies are solicited to determine whether or not they have a need. This is followed by an inquiry to the State, County, and local Government. If all have no interest in the building, it is then placed on the market for public bid.

(e) This office has asked the Rochester Post Office to supply you with a map delineating the area served.

(f) The construction of the Rochester facility is scheduled as follows:

(1) Start the structural steel - November 4, 1975.
(2) Complete pre-cast work - April 1, 1976
(3) Complete roof - May 29, 1976
(4) Start mechanization - October 1, 1976
(5) Start Vehicle Maintenance Facility - October 2, 1976
(6) Complete Vehicle Maintenance Facility Roof - July 6, 1976
(7) Complete project - May 22, 1977

The site plan for the new facility will be forwarded under separate cover.

Exhibit G — Letter, dated 11-13-75
annexed to Brown Affidavit.

This office sincerely hopes that the above information, in hindsight, will satisfy your needs. It is difficult to assemble in detail all of the actions that have taken place when it is concerned with a span of almost three years, over two agencies, and it is also concerned with personnel no longer with the Postal Service.

Sincerely,

J. F. Kenyon

J. F. Kenyon
General Manager
Real Estate Division

Exhibit H – Letter, dated 11-19-75, Resolutions and Comments of the Municipalities directing Involved annexed to Brown Affidavit.

GENESEE/FINGER LAKES REGIONAL PLANNING BOARD
Suite 500, Ebenezer Watts Building, 47 South Fitzhugh Street, Rochester, New York 14614
716 428 5640

ANNE F. AVERY, Chairman
PHILIP ROWLEY, First Vice Chairman
ARTHUR B. EDDY, Second Vice Chairman
HENRY W. WILLIAMS, JR., Treasurer
VIRGINIA T. DIEBOLT, Secretary
STUART O. DENSLOW, Executive Director

November 19, 1975

Mr. Benjamin J. Bailar, Postmaster General
United States Postal Service
475 L'Enfant Plaza SW
Washington, D.C. 20260

Re: General Mail Facility
Henrietta, New York

Dear Mr. Bailar:

The Genesee/Finger Lakes Regional Planning Board has conducted an A-95 review of the General Mail Facility to be located in the Town of Henrietta, New York.

This review has been conducted after major decisions about the project had been made and construction begun. This occurred because the U.S. Postal Service failed to submit the project for A-95 review as required under Part II of OMB Circular A-95 and as required under environmental review procedures of the National Environmental Policy Act of 1969, Section 102(c). As the designated Areawide Clearinghouse for this region, this agency cannot condone this disregard of Federally mandated review procedures.

Therefore, the Regional Planning Board has unanimously passed the attached resolution expressing its position on the Henrietta Mail Facility. Also, the resolutions and comments of the municipalities directly involved and impacted upon by the Postal Service's decision are enclosed.

Sincerely,

S.O. Denslow

Stuart O. Denslow
Executive Director

SOD:jm
Enclosures

EX H

Exhibit H — Letter, dated 11-19-75, Resolutions and Comments of the Municipalities directing Involved annexed to Brown Affidavit.

GENESEE/FINGER LAKES REGIONAL PLANNING BOARD
Suite 500, Ebenezer Watts Building, 47 South Fitzhugh Street, Rochester, New York 14614
716-428-5640

ANNE E. AVERY, Chairman
PHILIP ROWLEY, First Vice Chairman
ARTHUR B. EDDY, Second Vice Chairman
HENRY W. WILLIAMS, JR., Treasurer
VIRGINIA T. DIEPOLT, Secretary
STUART O. DENSLOW, Executive Director

PROJECT REVIEW COMMENTS

Project Number:	GFL-75-109
Date:	November 19, 1975
Planning Review Agency	
Name:	Genesee/Finger Lakes Regional Planning Board
Address:	Suite 500, Ebenezer Watts Building, 47 South Fitzhugh Street, Rochester, New York 14614
Source of Authority for Establishment of Agency:	Articles 5-G and 12-B General Municipal Law of the State of New York.
Grant Applicant	
Name:	United States Postal Service
Address:	475 L'Enfant Plaza SW, Washington, D.C. 20260
Project Description:	General Mail Facility, Henrietta, New York

Comments

The United States Postal Service is constructing a General Mail Facility in the Town of Henrietta. During the belated A-95 review, the following specific concerns were raised concerning the project:

1) The apparent lack of coordination between the Postal Service and the local municipalities - City of Rochester, County of Monroe and Town of Henrietta.

2) The lack of information concerning the site selection process and the reasons for selecting the specific site which was acquired.

Exhibit H – Letter, dated 11-19-75, Resolutions and Comments of the Municipalities directing Involved annexed to Brown Affidavit.

3) The justification for spending nearly $40,000 per acre for undeveloped land when sites with similar access amenities could be acquired for substantially less money.

4) The effect of the Postal Service relocation on employment opportunities for City of Rochester residents.

5) The disposition of the existing facility in Rochester has not been addressed.

In addition, the Regional Planning Board endorses the comments made by the Monroe County Planning Board and the City of Rochester Planning Commission.

Further, not only was this project not submitted for review until requested by the Regional Planning Board, but also repeated requests for additional essential information have been ignored. The failure of the Postal Service to comply with the Federally mandated review procedures required by Office of Management and Budget Circular A-95 and the National Environmental Policy Act of 1969, section 102(c) cannot be condoned.

Therefore, the following recommendations are made concerning the project:

1) Approval be denied until the outstanding issues are resolved.

2) The City of Rochester (or other appropriate local government) should take appropriate action such as a preliminary injunction to stop action on the project until the Postal Service complies with required review procedures, thus giving the City the opportunity to assess the project's impact.

3) Due to the extraordinary circumstances surrounding this review, copies of these comments shall be forwarded to the Postmaster General, Congressman Frank Horton, Congressman Barber Conable, Mayor Thomas Ryan, Supervisor Robert Oakes, County Legislature President Joseph Ferrari, City Manager Elisha Freedman, County Manager Lucien Morin, State Assemblymen and State Senators representing the City of Rochester and the Town of Henrietta, Chairman of appropriate Congressional Committees, the Office of Management and Budget and the City/County Delegation to the Regional Planning Board.

Stuart O. Denslow
Executive Director

Exhibit H — Letter, dated 11-19-75, Resolutions and Comments of the Municipalities directing Involved annexed to Brown Affidavit.

County of Monroe

NEW YORK

DEPARTMENT OF PLANNING
331 COUNTY OFFICE BUILDING
ROCHESTER, NEW YORK 14614

DON B. MARTIN, DIRECTOR

TELEPHONE:
(716) 473-5461

November 7, 1975

Mr. Stuart O. Denslow, Executive Director
Genesee/Finger Lakes Regional Planning Board
Suite 500 - Ebenezer Watts Building
47 South Fitzhugh St.
Rochester, New York 14614

RE: GFL-75-109
Monroe County
General Mail Facility

Dear Mr. Denslow:

The staff of the Monroe County Department of Planning has reviewed GFL-75-109, which pertains to the construction of a new general mail facility by the U. S. Postal Service in the Town of Henrietta, replacing the existing general mail facility in downtown Rochester. We recommend that this project not be approved until the U. S. Postal Service provides the basic information which is necessary to answer the following questions:

1. What will be the effects of abandoning the downtown Rochester general mail facility on its immediate environment, on employment opportunities downtown, and on the general vitality of the City of Rochester as the core of our metropolitan area?

2. What use will be made of the present post office in downtown Rochester once its use as a general mail facility is discontinued?

3. Is it feasible to renovate or redesign the downtown post office so that it may continue in use as a general mail facility, or is a new facility required because of financial reasons or because the present facility cannot be redesigned to meet the operational requirements of a general mail facility?

In order to conduct an adequate review of this matter under the A-95 process, we need basic information to answer the above questions. Maggie Ely of your staff requested a meeting with representatives of the Postal Service to address the above questions as well as other matters, and representatives of our office and the Rochester Department of Community Development were to be invited to attend that meeting. However, it is my understanding that the Postal Service refused to participate in such a meeting, indicating instead that it would submit a written statement on its efforts to coordinate its

Exhibit H — Letter, dated 11-19-75, Resolutions and Comments of the Municipalities directing Involved annexed to Brown Affidavit.

proposal with various interested parties. This communication has not yet been received, and, in consequence, we do not have the information which is required for an acceptable review of this project. In the absence of such information, we have no alternative other than to recommend disapproval of the proposed facility until the necessary information is supplied.

Several other factors give us cause to recommend disapproval until the need for the Henrietta location is satisfactorily demonstrated. The factors are as follows:

1. The proposed facility is contrary to the Monroe County Comprehensive Plan and the Comprehensive Regional Development Plan, both of which would retain such a one-of-a-kind facility in the downtown location in order to maintain the vitality of our core city.

2. The environmental assessment which was prepared for the proposed facility is inadequate, and in our judgement the assessment fails to conform with the intent of the National Environmental Policy Act. The assessment confined its investigation to an analysis of the environmental effects of the construction of a relocated facility on a specific site in the Town of Henrietta. We agree with the finding that the construction will have relatively minor effects on that particular site in question and the surrounding lands. That, however, is not the most important question of environmental impact. The most important question, in our opinion, is the economic, social, and environmental effect on downtown Rochester caused by the relocation of the postal facility. A full environmental assessment must address that question in terms of the removal of this facility from its present location and the environmental impact this relocation will have on the area surrounding the vacated site. The assessment explicitly states that it is not concerned with that problem, nor with any other alternatives to the proposed action of the Postal Service, and, on this basis, the assessment reaches the conclusion that a full environmental impact statement is not necessary. This, we believe, is a totally inadequate response to the intent and purposes of the National Environmental Policy Act.

3. The Postal Service may have violated certain procedural requirements by not submitting the environmental assessment for review under the A-95 process and by not going through the current A-95 review until construction of the proposed facility had already started.

4. Serious reservations on the proposed facility have been expressed by the two municipalities most directly affected, namely the City of Rochester (through its Planning Commission) and the Town of Henrietta (through its Supervisor). Serious reservation has also been expressed by the Monroe County Planning Board.

Sincerely,

Don B. Martin
Director of Planning

DBM:RBD:ar

cc: Genesee/Finger Lakes Monroe County Members

Exhibit H — Letter, dated 11-19-75, Resolutions and Comments of the Municipalities directing Involved annexed to Brown Affidavit.

RESOLUTION

Adopted by the City Planning Commission November 10, 1975.

WHEREAS, the U. S. Postal Service desires to construct a new generalmail facility to serve the Rochester area, such facility to be on one level and requiring in excess of 30 acres; and

WHEREAS, the Postal Service prefers a 44-acre site on Jefferson Road in the Town of Henrietta and has proceeded to purchase the site; and

WHEREAS, an environmental assessment was prepared for the Postal Service which evaluated the Jefferson Road site only, and concluded that an environmental impact statement need not be prepared; and

WHEREAS, the Planning Commission has expressed its continued concern that serious environmental issues have not been addressed, such issues being 1) the effect of abandoning the present downtown mail facility on employment opportunities and the surrounding neighborhood, 2) the disposition of the present building when vacated, and 3) study of the feasibility of renovating or redesigning the present building to continue its usefulness; and

WHEREAS, the Postal Service has awarded a contract for construction of the new general mail facility and construction has actually commenced without the necessary review and approval as required by OMB Circular A-95; and

WHEREAS, the Planning Commission feels strongly that both the letter and the spirit of the National Environmental Policy Act of 1969 have been seriously violated by the U. S. Postal Service;

NOW, THEREFORE, BE IT RESOLVED, that the City Planning Commission of Rochester, New York, hereby goes on record as being opposed to the relocation of the general mail facility from downtown Rochester to the Town of Henrietta because 1) such relocation will bring about potentially undesirable environmental consequences and 2) the U. S. Postal Service has been decidedly uncooperative in dealing with the municipalities involved; AND

BE IT FURTHER RESOLVED, that the position of the Planning Commission be communicated to the Postmaster General and to the U. S. Senators and Representatives from this area.

Ann B. Taylor

Ann B. Taylor
Secretary
City PlanningCommission

SUPPLEMENTAL AFFIDAVIT OF JOHN STAINTON IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Plaintiffs,

vs.

U. S. POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL,

Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

JOHN STAINTON, being duly sworn, deposes and says:

1. I am the Commissioner of the Department of Community Development of the City of Rochester. I make this Supplementary Affidavit in support of plaintiffs' application for a preliminary injunction herein as a result of my discovering additional copies of relevant correspondence between the parties in this matter which should be before the Court and which I believe demonstrate, in addition to the matters set forth in my previous Affidavit, why plaintiffs are entitled to the relief requested.

2. As my previous Affidavit states, the Postal Service never notified Rochester of its intent to have an "assessment" prepared or furnished us with information concerning its site selection. It was only as a result of a member from the Regional Planning Board's inquiring of the United States Environmental Protec-

tion Agency as to whether the Postal Service needed to file an Environmental Impact Statement that it was discovered by the parties that a supposed "Environmental Impact Statement" had been prepared for this project. (See Exhibit A attached hereto, R. L. Flint to Angelo J. Chiarella, June 10, 1975.) Efforts by Rochester to obtain this supposed "Environmental Impact Statement", however, took another month, and when it was obtained it turned out that what had been described by the United States Environmental Protection Agency as an "Environmental Impact Statement" was, in fact, "an assessment". (Exhibit B attached hereto, letter George A. Glover to Ann B. Taylor, July 21, 1975.)

3. I thereafter made inquiry as to why Rochester was not made aware of this publication until more than seven months after its publication. (Exhibit C attached hereto, letter John Stainton, September 10, 1975 to George A. Glover, Acting District Manager, United States Postal Service.) My inquiry was never answered except for the Postal Service's informing me on September 15, 1975 that my inquiry had been referred to their legal department. (Exhibit D attached hereto, letter September 15, 1975 from D. S. Fleming, District Manager, U. S. Postal Service, to John Stainton.)

4. Moreover, following the receipt of the Postal Service's "assessment" dated November 4, 1974, which concerned itself only with the Henrietta site, Rochester received a letter dated September 5, 1975 from the Postal Service indicating that other sites had, in fact, been under consideration. The letter says in part:

SUPPLEMENTAL AFFIDAVIT OF JOHN STAINTON IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

> Prior to selecting the location in Henrietta four sites were under consideration which had been submitted to the Postal Service as the result of a study made by the Department of Army, U. S. Corps of Engineers, acting as an agent of the Postal Service. On the basis of the site submitted, the Postal Service ultimately selected and purchased the property in Henrietta. An Environmental Assessment Study was prepared by the Cannon Partnership which found that there was no need to file an Environmental Impact Statement. The assessment, of course, was direct to the subject property in the Town of Henrietta. (Exhibit E attached hereto, letter Glenn Metzdorf, General Manager, Administration, Government Relations Department, to Ms. Beverly Vaughn, Chairperson, Rochester City Planning Commission, September 5, 1975.)

Thus, despite my request of March 20, 1975 for the Post Office to furnish us with its site studies (See ¶12, John Stainton Affidavit, sworn to January 13, 1975), and despite the indication in Mr. Metzdorf's letter of September 5, 1975 that the Postal Service had, in fact, "four sites under consideration" none of these other site studies were ever furnished to Rochester nor was an assessment done pertaining to these alternative sites.

5. As a further indication of the Postal Service's inconsistency in this matter and its misleading the parties in connection with what it intended to do with respect to the present post office facility, the Postal Service on October 3, 1975 in a letter from John C. Lintner, Senior Representative, Government Relations Department, to Congressman Frank Horton, said the following:

> It is our opinion that the environment surrounding the existing post office building in downtown Rochester will be unaffected since there is no intention to demolish or otherwise alter the exterior of the building. The building will continue to be occupied in whole or in part

BEST COPY AVAILABLE

SUPPLEMENTAL AFFIDAVIT OF JOHN STAINTON IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

by the Postal Service and the balance will be made available to other tenants if it is determined that our operations will not require full use of the structure. (Exhibit F attached hereto.)

6. However, subsequently the Postal Service reversed itself and took a position opposite from that expressed in Lintner's letter to Congressman Horton when, in a letter dated November 13, 1975 from J. F. Kenyon, Manager, Real Estate, United States Postal Service, to the Regional Planning Board, it said the following:

> The existing postal-owned building most certainly will be surplus to the needs of the service and as such will be offered for disposition under a standard procedure. Federal government agencies are solicited to determine whether or not they have a need. This is followed by an inquiry to the state, county and local government. If all have no interest in the building it is then placed on the market for public bid. (Exhibit A to John Stainton's Affidavit, sworn to January 13, 1976.)

7. Based upon these facts and those in Stuart Brown's and my Affidavit, I believe that the plaintiffs are entitled to the relief requested in this matter.

John Stainton

Sworn to before me this
day of January, 1976.

Mary Anne Macaracchio
Notary Public

MARY ANNE MACARACCHIO
[illegible]
My Commission Expires May 31, 19[illegible] 1977

Exhibit A – Letter, dated 6-10-75
attached to Stainton Supplemental Affidavit.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
ROCHESTER FIELD OFFICE
P.O. BOX 5036
ROCHESTER, NEW YORK 14627

June 10, 1975

RECEIVED
JUN 11 1975
MIDTOWN PLAZA

Mr. Angelo J. Chiarella, President
Midtown Holdings Corporation
300 Midtown Tower
Rochester, New York 14604

Dear Mr. Chiarella:

In reference to your letter of May 22, 1975, you raised the question as to whether the Post Office was obligated to file an environmental impact statement for their proposed relocation.

For your convenience, a copy of a brochure entitled, "In Productive Harmony" has been enclosed. This describes the requirements of the National Environmental Policy Act signed by the President on January 1, 1970. In general, environmental impact statements are required whenever Federal monies are involved in a project.

Concerning specifically the proposed Rochester Post Office relocation, I contacted several people and was told eventually that an environmental impact statement had been prepared for this project. If you are interested in pursuing the matter further or in obtaining a copy of the statement, you should contact:

Dean Flemming, District Manager
U.S. Postal Service
P.O. Box 568
Rochester, New York 14602

If we can be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

R. L. Flint

R. L. Flint
Chief, Program Support

cc: Paul Arbesman
Region II/attachments

Exhibit B — Letter, dated 7-21-75
attached to Stainton Supplemental Affidavit.

UNITED STATES POSTAL SERVICE
EMPIRE DISTRICT
P.O. BOX 568
ROCHESTER, NEW YORK 14602

July 21, 1975

RECEIVED JUL 22 1975

Ms. Ann B. Taylor
Director of Planning
Bureau of Planning
150 State Street
Rochester, New York 14614

Dear Ms. Taylor: Report on

As requested, enclosed is one copy of the Environmental Impact Study relating to the construction of a new General Mail Facility in Rochester, New York.

Very truly yours,

George A. Glover

George A. Glover
Acting District Manager
Empire District
Rochester, New York 14602

Enclosure

Bob I am assuming that you will want this for the Monday meeting May I have it Thursday 5 p.m.?

EXHIBIT B

Exhibit C – Letter, dated 9-10-75
attached to Stainton Supplemental Affidavit.

CITY OF ROCHESTER, NEW YORK
DEPARTMENT OF COMMUNITY DEVELOPMENT

Office of the
Commissioner

30 State Street
Rochester, New York 14614
(716) 232-1100

September 10, 1975

Mr. George A. Glover, Acting District Manager
Empire District
United States Postal Service
P. O. Box 568
Rochester, New York 14602

Re: Environmental Assessment
United States Post Office
and Vehicle Maintenance Facility
Rochester, New York
5 November 1974

Dear Mr. Glover:

This is to acknowledge receipt of the above referenced environmental assessment which you sent to Ann Taylor, Director of Planning in this department, under cover of your letter of July 21, 1975.

We appreciate the opportunity to review the assessment, but we are somewhat surprised that we were not aware of its publication until June of this year, more than seven months after its publication.

This office has been in contact with Rochester Postmaster William Finn who has advised us that Postal Service legal personnel in Philadelphia have indicated that public notice is not required when a full environmental impact statement is not to be prepared. It is our understanding, however, that the National Environmental Policy Act (NEPA) of 1969, and Council on Environmental Quality guide lines require public notice of publication of environmental assessments as well as of full environmental impact statements.

EXHIBIT C

BEST COPY AVAILABLE

Exhibit C — Letter, dated 9-10-75
attached to Stainton Supplemental Affidavit.

Mr. George A. Glover, Acting District Manager
Empire District
United States Postal Service
Rochester, New York 14602

In the event that the assessment determines that an environmental impact statement will not be required, we had thought that a Finding of No Significant Environmental Impact was to be a publicly available record in the affected locality.

We would greatly appreciate learning the date of such public notification and where we can find it, so that we have a record of all the official actions that transpired. Your prompt response on this matter would be appreciated.

Very truly yours,

JS:tpa
cc: William Finn,
Postmaster
Beverly Vaughan

bcc: Sue Forbes
Ann Taylor
Neil Jacchik
Leo Lundback

John Stainton
Commissioner
Department of Community
Development

Exhibit D -- Letter, dated 9-15-75 attached to Stainton Supplemental Affidavit.

Dayton 9/11

UNITED STATES POSTAL SERVICE
EMPIRE DISTRICT
P.O. BOX 568
ROCHESTER, NEW YORK 14602

RECEIVED SEP 1 7 1975

September 15, 1975

RECEIVED
SEP 18 10 30 AM '75
COMMUNITY
DEVELOPMENT

Mr. John Stainton, Commissioner
Department of Community Development
City of Rochester
150 State Street
Rochester, New York 14614

Dear Mr. Stainton:

This will acknowledge receipt of your letter dated September 10, addressed to Mr. George A. Glover, Acting District Manager, United States Postal Service.

Previously, we were requested to furnish a copy of the Environmental Impact Study completed relative to construction of a new General Mail Facility on Jefferson Road. This request was acknowledged and a copy of the study furnished.

Your letter makes reference to the National Environmental Policy Act of 1969 and other bodies involved in environmental aspects of community development. For this reason, we are forwarding your communication to our legal department for reply.

Very truly yours,

D. S. Flemming
District Manager
Empire District
Rochester, New York 14602

EXHIBIT D

Exhibit E – Letter, dated 9-5-75
attached to Stainton Supplemental Affidavit.

RECEIVED SEP 1 01975.

OFFICE OF THE POSTMASTER GENERAL
Washington, D.C. 20260

September 5, 1975

Ms. Beverly Vaughn
Chairperson
Rochester City Planning Commission
150 State Street
Rochester, New York 14614

Dear Ms. Vaughn:

Your August 8 Mailgram addressed to Mr. John C. Lintner has been referred to my office for attention and response. You wrote concerning the General Mail Facility and Vehicle Maintenance Facility under construction in the town of Henrietta which is intended to serve the Rochester area.

The Postal Service is proceding with construction of the facility on the site selected. We regret that you are not in favor of this site on which the building is being constructed. Prior to selecting the location at Henrietta, four sites were under consideration which had been submitted to the Postal Service as the result of a study made by the Department of the Army U. S. Corps of Engineers acting as an agent of the Postal Service. On the basis of the sites submitted, the Postal Service ultimately selected and purchased the property in Henrietta. An environmental assessment study was prepared by the Cannon Partnership which found that there was no need to file an Environmental Impact Statement. The assessment, of course, was directed to the subject property in the town of Henrietta.

In view of the circumstances there are no plans at present to file an Environmental Impact Statement.

Sincerely yours,

G. A. Metzdorf

Glenn A. Metzdorf
General Manager - Administration
Government Relations Department

EXHIBIT E

Exhibit F – Letter, dated 10-3-75 attached to Stainton Supplemental Affidavit.

OFFICE OF THE POSTMASTER GENERAL
Washington, D.C. 20260

October 3, 1975

Honorable Frank Horton
House of Representatives
Washington, D. C. 20515

Dear Congressman Horton:

This is in further response to your September 15 letter on behalf of Mr. Martin A. Foos, Chairman of the Monroe County Planning Board of Rochester, concerning Postal Service plans for the present Rochester facility upon completion of the General Mail Facility now under construction at Henrietta.

In his letter to you, Mr. Foos expressed his concern for the effect on downtown Rochester caused by the relocation of the postal facility. It is our opinion that the environment surrounding the existing post office building in downtown Rochester will be unaffected since there is no intention to demolish or otherwise alter the exterior of the building. The building will continue to be occupied in whole or in part by the Postal Service and the balance will be made available to other tenants if it is determined that our operations will not require full use of the structure.

Sincerely,

John C. Bintner
Senior Representative
Government Relations Department

EXHIBIT F

DEFENDANTS' NOTICE OF MOTION TO AMEND ANSWER.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER AND GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Civ. 1976-12

Plaintiffs,

-vs-

UNITED STATES POSTAL SERVICE AND BENJAMIN F. BAILAR, POSTMASTER GENERAL,

Defendants

PLEASE TAKE NOTICE that upon the Affidavit of Gerald J. Houlihan, Assistant United States Attorney, the defendants will move this Court pursuant to Rule 15 of the Federal Rules of Civil Procedure on February 26, 1976 at the United States Courthouse, 100 State Street, Rochester, New York at 10:00 a.m., or as soon thereafter as counsel can be heard, for an Order permitting the defendants to amend their Answer in order to add the affirmative defense of laches.

Dated at Rochester, New York, February 24, 1976.

Yours, etc.,

RICHARD J. ARCARA
United States Attorney

By: GERALD J. HOULIHAN
Assistant United States Attorney

AFFIDAVIT OF GERALD J. HOULIHAN IN SUPPORT OF DEFENDANTS' MOTION TO AMEND ANSWER.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Civ. 76-12

Plaintiffs

-vs-

UNITED STATES POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL,

Defendants

GERALD J. HOULIHAN, being duly sworn deposes and says:

1) I am an Assistant United States Attorney stationed at Rochester, New York and am familiar with all of the facts and proceedings involved in the captioned case.

2) On January 14, 1976, the defendants were served with a Summons and Complaint in the captioned matter. The defendants answered that Complaint on February 13, 1976 and included in that answer seven affirmative defenses.

3) Through inadvertence and oversight your deponent neglected to plead laches as an affirmative defense as is required by Rule 8.(c) of the Federal Rules of Civil Procedure.

4) A first part of the trial was held on February 19, 1976 at which time in their opening statement the defendants advised this Court and the plaintiffs that it intended to rely on the affirmative defense of laches.

5) Plaintiffs were well aware that laches would be pleaded as an affirmative defense by reason of the fact that Point VI of their trial memorandum specifically addressed this issue.

AFFIDAVIT OF GERALD J. HOULIHAN IN SUPPORT OF DEFENDANTS' MOTION TO AMEND ANSWER.

6) Since plaintiffs were well aware that laches would be used as an affirmative defense and took steps in their case to counteract this defense, no prejudice will result to them if this Court grants relief for the defendants' to amend its Answer to include an additional affirmative defense.

7) Your deponent has attached a proposed Amended Answer

THEREFORE the defendants respectfully request that this Court grant leave to the defendants to file an Amended Answer.

Dated at Rochester, New York, February 24, 1976

GERALD J. HOULIHAN

Sworn to before me
this 24th day of February, 1976.

VIRGINIA LEE FEOL
NOTARY PUBLIC, State of N. Y., Monroe County
My Commission Expires March 30, 19....

AMENDED ANSWER.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER AND GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Plaintiffs,

Civ. No. 1976-12

v.

UNITED STATES POSTAL SERVICE AND BENJAMIN F. BAILAR, POSTMASTER GENERAL,

Defendants.

The United States Postal Service and the United States Postmaster General by their attorney, Richard J. Arcara, United States Attorney for the Western District of New York, Gerald J. Houlihan, Assistant United States Attorney, of counsel, answer the plaintiff's complaint as follows:

(1) The defendants admit those allegations contained in Paragraphs 4, 6, 9, 11 and 13 of the plaintiffs' complaint.

(2) The defendants deny all of those allegations contained in Paragraphs 3, 14, 18, 22, 23, 25, 26, and 29 of the plaintiffs' complaint.

(3) The Government denies knowledge or information sufficient to form a belief as to those allegations contained in Paragarphs 7 and 34 of the plaintiffs' complaint.

(4) Defendants deny knowledge or information sufficient to form a belief as to those allegations contained in Paragraph 1, of the plaintiffs complaint by reason that no decision has been made to abandon the Main Post Office in downtown Rochester and the plans for the use of such post office in the future. It is undecided at this point whether any action by the United States Postal Service may or may not culminate in a decision to abandon the Rochester facility.

(5) The defendants deny knowledge or information sufficient to form a belief as to that portion of the plaintiff's complaint which alleges that this action arises under the National Environmental Policy Act, and the rules and regulations promulgated thereunder, and each and every other allegation of that paragraph.

(6) The defendants deny the allegations contained in Paragraph 5 of the plaintiffs' complaint on the basis that no controversy exists.

(7) The defendants deny that portion of Paragraph 8 of the plaintiffs' complaint that alleges that the United States Postal Service is a government corporation; instead, the United States Postal Service is an independent establishment within the Executive Branch of the United States Government; but admits each and every other allegation of Paragraph 8 of the plaintiffs' complaint.

(8) The defendants deny that portion of Paragraph 10 of the plaintiffs' complaint that alleges that any decision to abandon the Main Postal facility in downtown Rochester or that any decision to construct a new facility in the Town of Henrietta was made unlawfully, but admits each and every other allegation of Paragraph 10 of plaintiffs' complaint.

(9) The defendants admit that portion of Paragraph 12 that is not incomplete.

(10) The defendants admit that portion of Paragraph 15 that alleges that on or about November 5, 1974 an Environmental Assessment was filed in connection with the construction of the new facility in the Town of Henrietta but states further that the Environmental Assessment was under consideration by the United States Postal Service since 1973.

(11) The defendants admit that portion of Paragraph 16 of the plaintiffs' complaint that allege that a determination was made that an Environmental Impact statement was not required in connection with the construction of the new postal facility in the Town of Henrietta but deny any allegation of that Paragaraph which alleges that a final decision is made with regard to the ultimate disposition of the Main Postal facility in the City of Rochester.

(12) The defendants admit that portion of Paragraph 17 which alleges that the construction of the postal facility in Henrietta was commenced,but allege further that the commencement began on or about August 1, 1975 and deny each and every other allegation of that Paragraph on the basis that the United States Postal Service did comply with and meet all legal requirements.

(13) The defendants admit those portions of Paragraphs 28, 31, 32 and 33 of the plaintiffs' complaint as being portions of the statutes cited,but deny that these allegations are complete in any respect as to the construction of those statutes in connection with the United States Postal Service.

(14) The Government denies upon information and belief each and every other allegation of the plaintiff's complaint not heretofore admitted, controverted or denied.

FIRST DEFENSE

The plaintiffs have failed to state a cause of action upon which relief can be granted.

SECOND DEFENSE

The preparation of a negative determination as to the Environmental Impact of the proposed construction by the United States Postal Service was based upon a full and complete

administrative record which was neigher arbitrary nor capricious and the defendants have fully complied with the provision of the National Environmental Policy Act.

THIRD DEFENSE

There is no present justiciable controversy upon which the Court can act by reason of the fact that no decision has been made to abandon the Rochester facility.

FOURTH DEFENSE

The City of Rochester and the Genesee-Finger Lakes Regional Planning Board lack standing to challenge the proposed construction of the new Postal Service facility in the Town of Henrietta.

FIFTH DEFENSE

The defendants are not subject to the requirements of the demonstration cities and Metropolitan Development Program by reason of an exemption contained in Title 39, United States Code, Section 410.

SIXTH DEFENSE

The defendants are not subject to the requirements of the Intergovernmental Cooperation Act by reason of an exemption contained in Title 39, United States Code, Section 410.

SEVENTH DEFENSE

The defendants are not subject to the judicial review of the Administrative Procedure Act by reason of the specific exemption contained in Title 39, United States Code, Section 410.

EIGHTH DEFENSE

The plaintiffs are guilty of laches.

WHEREFORE, the defendants pray that this action be dismissed and that reasonable costs and attorney's fees be assessed against the plaintiffs and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney

By: GERALD J. HOULIHAN
Assistant United States Attorney
for the United States Postal Service
and Benjamin F. Bailer, Postmaster General

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION (Burke, U.S.D.J., 3-23-73).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD,

Plaintiffs

- vs - CIVIL 76-12

UNITED STATES POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL,

Defendants

Trial before the undersigned at Rochester, New York, on February 19 and 20 and February 26, and 27, 1976.

Goldstein, Goldman, Kessler & Underberg
1800 Lincoln First Tower
Rochester, N.Y. 14604
Attorneys for plaintiffs

Gerald J. Houlihan
Assistant United States Attorney
for the defendants

FINDINGS OF FACT

1. Plaintiff, City of Rochester, is a municipal corporation existing under the laws of New York State. Plaintiff Genesee-Finger Lakes Regional Planning Board exists pursuant to Article 12-B of the New York General Municipal Law.

2. Defendant, United States Postal Service, is an independent establishment within the Executive Branch of the

United States Government. The defendant, Benjamin Bailar, is the United States Postmaster General.

3. The Rochester Main Post Office was constructed in 1933. In the early 1960's the United States Postal Service, then the Post Office Department, made a decision that, with the substantial growth in population and mail requirements for the Rochester metropolitan area, the Main Post Office was inadequate to house and service mail processing and operations.

4. With the decline in railroad services and lack of dependability, the improvement of roads and arterial highways, the use of trucks to transport mail became practically the only method of moving the mail. The increased use of trucks of all sizes for transport and delivery of mail required more land area for the establishment and operation of a vehicle maintenance facility to repair and maintain trucks. The necessity for a mail facility to be near a railroad diminished. Transportation requirements called for close proximity to major highways to allow high-speed travel.

5. Due to the inadequacy of the Main Post Office to properly handle the volume of mail processing, the increasing difficulty mail trucks experienced in traveling in downtown Rochester and the inadequate space at the Main

Post Office for parking, maneuvering and docking of large mail transports, the United States Postal Service was forced to seek an additional facility.

6. In 1968 the United States Postal Service leased the Rochester Postal Annex located at 2340 Brighton-Henrietta Townline Road in the Town of Henrietta at an annual rental of $127,893.00. Employees from the Main Post Office were reassigned to work at the Rochester Annex. Although this facility was located in Henrietta, about one mile from the site of the new facility, no employees were lost because of inability to commute to the Rochester Annex. The United States Postal Service then arranged with the Regional Transit Service to provide bus transportation for employees to the Rochester Annex. Despite the reassignment of between 300 and 400 employees to the Rochester Annex, The environmental conditions of the Main Post Office and the City of Rochester were not affected.

7. William Finn, the Rochester Postmaster, in August 1970 requested serious consideration of a complete new facility for the Rochester area. A similar request had been made by a previous local postmaster in December 1969. The requested facility had to be at one location and had to be large enough to handle existing mail volume and projected mail volume for from ten to twenty years. It is the practice

of the United States Postal Service to continuously evaluate existing plants and operations to anticipate needs and to promote efficiency of mail processing. It was well aware prior to the request for new facilities that existing facilities for the Rochester area were wholly inadequate.

8. Serious consideration was given to altering and expanding the Main Post Office. It was determined that alteration and expansion would be economically impractical and virtually impossible because of the lack of land available for purchase at that time around the Main Post Office and because it was the experience of the United States Postal Service that efficient mail operations and equipment demanded that such operations be conducted in a one story facility.

9. Preliminary Distribution and Operations Concepts were prepared, studied and revised throughout the period from February 1968 to 1973. These studies evaluated existing operations and projected expected requirements and focused on preferred site areas.

10. In March 1971 the General Dynamics building in the City of Rochester was considered to be a preferred site area. An extensive study was conducted by the United States Postal Service. The General Dynamics building was abandoned as a site for the new facility. It was determined that the building was too large for Postal Service needs. It was a multi-level building. An additional reason was that the

Rochester City School District was interested at that time in the General Dynamics building for acquisition.

11. In 1973 the United States Postal Service prepared the General Planning Assumptions for a Rochester facility and determined on the basis of its previous studies, knowledge and expertise, that the new facility would require a minimum area of about 36 acres. In February 1973 the United States Postal Service requested Real Estate Officer, Milton Beers, to conduct an investigation to determine the availability of sites containing 36 to 40 acres in or around the City of Rochester. Beers visited and spoke with officials at the Assessors Offices of Rochester, the towns of Gates, Chili, Greece, Brighton and Henrietta, and conferred with Dwight VanDeVate of the New York State Urban Development Corporation to determine whether any sites were available containing from 36 to 40 acres. As a result of this investigation, from 15 to 17 sites were found both in and around the City of Rochester. At least two of those sites were in the City of Rochester, but were located near the city boundary lines, requiring extensive condemnation by the city before becoming available and offered inadequate access to main highways. The cancellation of the proposed Genesee Expressway into the City made good highway access even more remote. There were no sites of the required size

in downtown Rochester. Each of the 15 to 17 sites were visited by United States Postal Service representatives. Evaluations were made and a Preliminary Site Selection Report was completed in early 1973, setting forth the considerations given for the selection of sites and focusing on seven potential sites.

12. In April 1973, United States Postal Service representatives of EEO and FWPC did a complete study of the potential sites and their relationship to and effect upon employees. The April 1973 study included an evaluation of the current work force and made specific findings regarding the effect of the proposed move with regard to transportation, medical services and housing.

13. Site No. 5 was the site selected. It is located in the recommended corridor of development as proposed by the Genesee-Finger Lakes Planning Board in its comprehensive plan of June 1975. The EEO studies of April 1973 and August 1973 were complete and thorough in considering the impact the construction of the new facility would have on the current work force and gave serious consideration to all potential sites including at least two within the City, which it did not recommend. In August 1973 a Site Selection Team composed of representatives of all areas of responsibility of the United States Postal Service recommended Site No. 5, except for a rezoning problem. Site No. 6 in the Town of Henrietta was its next best choice.

14. From February 1973 to November 1975 the United States Postal Service continued to assemble an administrative record considering all conceivable aspects of the proposed new facility and its impact on the environment. The administrative record consists of documents:

Distribution and Operations Concept

General Planning Assumptions

Site Selection Reports

Working Conditions Improvement Program Report

Site Selection Team Recommendation

Equal Employment Opportunity Studies

Function Design Specifications

Decision Analysis Report

Photo Report of Site

Appraisal Report

Environmental Assessment

Other miscellaneous Reports and approvals made part of the record

15. The United States Postal Service had alternatives to every action it ultimately took. It objectively balanced all interests before arriving at its final decision.

16. The City of Rochester was unable to supply a site adequate to meet the minimum area requirement. Officials of the City of Rochester knew as early as February 1974 of the

proposed action by the United States Postal Service. The Genesee-Finger Lakes Regional Planning Board knew in February 1974 of the proposed action of the United States Postal Service. Numerous newspaper articles appeared in local daily papers announcing the plans to purchase the site, the awarding of contracts, and other pertinent data about the new facility, particularly as shown in Exhibits D-2 through D-16 and Exhibits D-21 through D-24.

17. The plaintiffs have not proved any environmental harm as a result of the construction of the new facility. The new facility is wholly within the Town of Henrietta. The site is zoned to permit the use of the property for a mail facility without change in zoning.

18. William Usher was the responsible official of the United States Postal Service who made the original determination that no Environmental Impact Statement was required because the proposed project did not significantly affect the quality of the human environment. Usher's determination was made on the basis of the complete administrative record.

19. There is no adverse environmental impact which significantly affects the quality of the human environment by the construction of the new facility.

20. Officials of the United States Postal Service met a number of times with Henrietta officials to discuss the

proposed plans. No environmental issues were raised by site officials.

21. If construction of the new facility is stopped, the defendants will suffer severe prejudice. At the time this suit was started the facility was 18 percent completed. About eight million dollars had been expended, exclusive of the purchase of real estate.

22. The United States Postal Service has fully complied with all of the requirements of NEPA.

23. The scheduled occupancy date for the new facility is September 1977. Until then the Main Post Office will be completely utilized. After completion of the new facility, only the operations and mail processing portion of the Main Post Office will be moved to the new facility. The United States Postal Service will occupy about 25 percent of the Main Post Office for customer service and delivery functions, after occupancy of the new facility.

24. The general public will not experience any different service by reason of the move to the new facility. The complete facility of the Main Post Office will be properly maintained after September 1977. The City will suffer no blight by reason of the move to the new facility in Henrietta.

25. The injuries claimed by the plaintiffs based upon the abandonment of the Main Post Office are speculative,

fanciful and will not occur because the Main Post Office will not be abandoned. J. F. Kenyon, Real Estate Officer, said in a letter dated November 13, 1975 that the Main Post Office will no doubt become surplus and be abandoned. Kenyon was not in a position of authority to make policy decisions for the United States Postal Service. That statement made by Kenyon was his own personal opinion and was not based upon an evaluation of the needs of the City of Rochester to have a facility in downtown Rochester to handle customer service and delivery.

26. Based on all the facts the Main Post Office will not be abandoned.

CONCLUSIONS OF LAW

1. The United States Postal Service made its determination that the proposed construction of the new facility in the Town of Henrietta will not significantly affect the quality of the human environment on the basis of the reviewable record consisting of the documents:

Distribution and Operations Concept

General Planning Assumptions

Site Selection Reports

Working Conditions Improvement Program Report

Site Selection Team Recommendation

Equal Employment Opportunity Studies

Function Design Specifications

Decision Analysis Report

Photo Report of Site

Appraisal Report

Environmental Assessment

Other Miscellaneous Reports and Approvals Made Part of the Record.

2. The Preliminary determination of the United States Postal Service that the construction of the new facility will not significantly affect the quality of the human environment was not arbitrary, capricious or an abuse of discretion.

3. There is no requirement in law for the United States Postal Service to prepare a detailed Environmental Impact Statement with regard to the construction of the new facility. National Environmental Policy Act does not require referral of the proposed plan to other federal, state or local agencies for review unless a detailed Environmental Impact Statement is required. The United States Postal Service was not required to have its plans reviewed by the City of Rochester or the Genesee-Finger Lakes Regional Planning Board.

4. The defendants have not violated the Inter-governmental Co-operation Act of 1968 nor its rules and

regulations by failing to notify plaintiff Genesee-Finger Lakes Regional Planning Board of the intention to construct the new facility, or by failing to provide adequate information or to otherwise co-operate with said plaintiff so as to enable it to conduct an A-95 Review.

5. The United States Postal Service has fully complied with the requirements of NEPA in regard to the new facility in Henrietta.

6. Section 410(a) of Title 39, U.S.C., exempts the United States Postal Service from any requirements of the Intergovernmental Co-operations Act of 1968 and the Demonstration Cities and Metropolitan Development Program Act of 1966.

7. The construction of the new facility in Henrietta is separate and apart from the abandonment of the Main Post Office in the City of Rochester.

8. Plaintiffs have not proved any instance of environmental injury as a result of the construction of the new facility in Henrietta.

9. Both plaintiffs were aware of the proposed plans of the United States Postal Service since February 1974.

10. Both plaintiffs knew of the purchase of the site of the new facility by the United States Postal Service in July 1974. Both plaintiffs were guilty of laches in

asserting their claimed legal rights in this suit. They waited eighteen months after the site was purchased to begin this suit. The new building was 18 percent completed and approximately eight million dollars had been expended, exclusive of the purchase of the site, when this suit was begun.

11. The defendants would be prejudiced by stopping construction at this time. The cost of abandoning or altering the proposed project outweigh any benefits that might accrue to the general public by reason of plaintiffs speculative claims.

12. The suit is barred by laches of both plaintiffs.

13. Plaintiffs' claims of injury as a result of the abandonment of the Main Post Office are social and economic rather than environmental. They are not sufficient in themselves to actuate the controls of the National Environmental Act. Plaintiffs' claims of injuries are speculative and remote.

14. The City of Rochester and Genesee-Finger Lakes Regional Planning Board do not have standing to maintain this suit..

15. Plaintiffs' demands for relief are in all respects denied.

IT IS HEREBY ADJUDGED that the action is dismissed.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

March 23, **1976.**

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JUDGMENT, dated 3-23-76.

JUDGMENT ON DECISION BY THE COURT — CIV 32 (7-63)

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE No. 76-12

CITY OF ROCHESTER and
GENESEE-FINGER LAKES REGIONAL PLANNING BOARD

vs.

UNITED STATES POSTAL SERVICE and
BENJAMIN F. BAILAR, United States Postmaster General

U.S. DISTRICT COURT
W.D. OF N.Y.

JUDGMENT

This action came on for trial ~~before the Court~~, Honorable Harold P. Burke, United States District Judge, presiding, and the issues having been duly tried ~~and~~ and a decision having been duly rendered,

It is Ordered and Adjudged that the action is dismissed.

Dated at Buffalo, New York, this 23rd day of March, 1976.

JOHN K. ADAMS
Clerk of Court

PLAINTIFFS' NOTICE OF APPEAL, filed 4-16-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD, Plaintiffs, -vs- UNITED STATES POSTAL SERVICE AND BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL, Defendants.	Civ. 76-12

NOTICE IS HEREBY GIVEN that plaintiffs hereby appeal to the United States Court of Appeals for the Second Circuit from the order, dated March 23, 1976 and entered in this action of March 24, 1976, which denied plaintiffs' demands for relief and dismissed this action after trial.

Dated: Rochester, New York
April 15, 1976

GOLDSTEIN GOLDMAN KESSLER & UNDERBERG

By: _____
Larry A. Stumpf
Attorneys for Plaintiffs
1800 Lincoln First Tower
Rochester, New York 14604
Telephone (716) 325-1930

EXCERPTS FROM TRANSCRIPT OF TESTIMONY.
PROCEEDINGS, dated 2-19-76.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

CITY OF ROCHESTER and GENESEE-FINGER LAKES REGIONAL PLANNING BOARD, Plaintiffs,	)	
-vs-	)	CIVIL ACTION NO. 76-12
UNITED STATES POSTAL SERVICE and BENJAMIN F. BAILAR, UNITED STATES POSTMASTER GENERAL, Defendants.	)	

BEFORE: HON. HAROLD P. BURKE
United States District Judge
Rochester, New York

DATE: Thursday, February 19, 1976

TIME: 10:00 A.M.

VOLUME: 1 of 3

PAGES: 1 through 173

* * * * *

(Plaintiffs' Exhibits 2 and 3 marked in evidence.)

Q Just for the record, Mr. Brown, could you identify by date and nature of the document Exhibit 2 for us?

A The title of the document is Project Review Comments. The date is November 19, 1975, and it says, "Planning Review Agency," and the subject party in question is "Postal Service."

Q Could you do the same for Exhibit P-3, please?

A Exhibit P-3 is a letter from Stuart Denslow, Executive Director of the Regional Planning Board, to Benjamin J. Bailar, Postmaster General, dated November 19, 1975.

MR. STUMPF: Thank you, Mr. Brown. That concludes my direct examination.

THE COURT: Before we start cross examination, we will take a recess.

(Recess from 11:15 A.M. to 11:30 A.M.)

CROSS EXAMINATION

BY MR. HOULIHAN:

Q Mr. Brown, how familiar are you with Postal Service operations?

A What do you mean, "how familiar"?

Q Do you know anything about the processing and handling of mail?

A No.

Q Do you know what requirements that the Postal Service might have in terms of space in order to handle the volume of mail that is generated by the Rochester area?

A Only by what information they submitted to us in the Review Process.

Q You have no independent knowledge of that, is that right?

A No.

Q Are you aware that the United States Postal Service, the Rochester facility, doesn't only serve the City of Rochester? Are you aware that it also serves counties outside of Monroe County?

A Yes.

Q Are you aware that the Postal Service has definitive need to be close to highways?

A Yes.

Q And are you aware that obviously the best place to be is near main highways?

A Yes.

Q In their review, did they tell you they needed thirty-six acres?

A Yes.

Q Do you have any quarrel with the Postal Service needing thirty-six acres?

A No.

Q Do you think it is reasonable that they might require thirty-six acres of land in order to handle mail processing now and in the future?

A I would say it is probably reasonable.

Q Are you aware of a thirty-six acre plot in the City of Rochester?

A Yes.

Q Where is that?

A In the downtown area, in the urban renewal area.

Q In the central business district?

A Yes.

Q Is that near a major highway?

A Yes.

Q Which one is that?

A The Inner Loop.

Q In order to get from the Inner Loop to this urban renewal area, what kind of roads would the trucks have to pass over?

A Major roads within the City.

Q Streets within the City is what you mean, right?

A An arteria..

Q You are not talking about anything of the size of the Genesee Expressway that is proposed out in the Henrietta area or with the New York State Thruway? You don't mean anything like that, do you?

A But it would be almost direct access from the Inner Loop to the Eastern and Western Expressway.

Q Is this the only parcel of property --

THE COURT: What parcel of property?

A He asked as an example, "Do you know of any other sites within the City?"

THE COURT: Thirty-six acres?

A That's correct. In the downtown renewal area, the Southeast Loop section; there are other areas up in the urban industrial area in the Western section of the City.

Q Are you aware that at the time of the meeting with the City officials in March of 1974 that they were unable to provide any acreage in the City of Rochester in excess of fifteen acres?

A No, I didn't know that.

Q Would that change your thinking, then, in terms of whether

the property was available?

A I couldn't say. I would have to see the communications and the information.

Q Is the Genesee-Finger Lakes Regional Planning Board concerned only with the City of Rochester, or do you have your area concerned wider than that?

A It is substantially wider than that.

Q So actually, you are concerned with growth and development, not only within the City but in other areas, is that right?

A That's right.

Q And in the process of determining this Comprehensive Plan, which apparently was the major function of the Planning Board, did you develop growth corridors that were consistent with the development of this whole region?

A Yes, we did.

Q And did the growth corridors--and there were at least five growth corridors, as I understand it, isn't that correct?

A That's right.

Q Isn't this proposed facility right in the proposed growth corridor one of the five proposed growth corridors?

A That's right.

Q So it is really not the fact that they are building out there that really you object to, but it is more the impact on the City of Rochester, is that right?

A Well, somewhat.

Q What do you mean by "somewhat"?

A When the review of the program was in process, we inquired as to the means that the Postal Service used to select this particular site. One of the concerns that the Board had was that the acreage requirement in terms of dollars seemed to be very high. Without going into an in-depth study and having not seen the Post Office report on site selection, we could think almost immediately of another site in Henrietta probably capable of being acquired at substantially less money and which would, in fact, reinforce Federal commitment for another major development project, and that being the new community of Riverton. I'm sure that the Town of Henrietta would have welcomed the proposal in that sense, and it would have reinvested or recommitted the Federal Government's investment of twenty some odd million dollars for Riverton.

Q So actually you are saying you have no qualms with them constructing a site in Henrietta, but you think it should be more to the south?

A That is not what I said, no. I said if the decision to relocate is irreversible, another site in Henrietta would have been preferred to the site that was selected, and that in any case, it would be, let's say, a very major concern to its impact on the City.

Q But you are not talking at all in terms of what the requirements of the Postal facility themselves or the processing of mail? You are just saying, "There are thirty-six acres of land some place else that we think will be better?" Is that what you are saying?

THE COURT: Cheaper.

Q Cheaper?

A And perhaps better.

Q And perhaps better?

A Yes.

Q But you admit that you have no personal knowledge of the requirements of mail processing?

A Well, that is a fact, one of the functions of the Review Process, and that is one of the things we tried to find out when we were in the Review Process, and we were not able to receive a copy of the site selection program that Postal Service was in, which I imagine would have included their criteria and their requirements.

Q You mentioned this Review Process as though it were a requirement. Isn't it a fact that out of the reviews, and I believe you said some five hundred reviews that the Planning Board has done, and these are really for State, local and county organizations, you are authorized by State statute, is that right?

A Yes.

Q And you are aware that the Federal Government under the doctrine of sovereign community is not controlled by State law?

MR. STUMPF: I object to that. It calls for a legal conclusion of the witness.

THE COURT: Objection is overruled. I will receive it.

Q You may answer.

A These regulations are promulgated by a Federal agency, Office of Management and Budget, and they include requirements for direct Federal aid projects to be reviewed by the regional clearinghouse.

Q Do they include requirements or recommendations?

A Requirements for the review.

Q In terms of the A-95 Review, you are talking about the

Intergovernmental Cooperation Act, is that right?

A Yes.

Q You would have no problem that if the Court should decide that the Intergovernmental Cooperation Act does not apply to the Postal Service, that the Planning Board really has no interest in this action, is that fair?

MR. STUMPF: I again object. It calls for a legal conclusion.

THE COURT: I will sustain the objection.

Q Your interest in the site selection process stems from the Planning Board wanting to look over the shoulder of the Postal Service in determining what site it ought to select, is that right?

A No. The purpose of the Review Process is to enable the Federal Government to insure that the money it provides for local and direct Federal programs are consistent with local and regional plans. Without the A-95 Review process, Federal money to this community comes into here from various different disparate sources. The A-95 Review provides a means for the Federal Government to coordinate where its monies are going so that they are mutually beneficial.

Excerpts from Transcript of Testimony.
Mr. Brown for Plaintiffs, Cross by Mr. Houlihan.

Q But you are talking about Federal money and aid to local construction or State construction, is that right?

A The requirements also talk about direct Federal programs.

Q Are you now construing a statute of the Intergovernmental Cooperation Act, is that what you are saying?

A In the A-95 rules, there are requirements for direct Federal programs to go through the Review Process.

Q Does it say that the United States Postal Service must have A-95 Review?

A It doesn't specifically point out the Postal Service.

Q How about the Government Service Administration? Does it point out that?

A The Government Service Administration program administers A-95.

Q Are they required to have A-95 Review for their construction?

A I don't know.

Q As a matter of fact, this building that we are now in was constructed by the Government Service Administration, was it not?

A I don't know.

Q You don't know who constructed the building?

A No.

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Q It was completed in May of '73, and that was during the existence of the Planning Board, is that right?

A Yes. It was completed when the Board was in existence.

Q It started construction while the Board was in existence, isn't that right?

A It may have been.

Q Did you make any findings with regard to this building that it is inappropriate?

A No.

Q Was that submitted to you for review?

A No.

Q Did you make a belated review of this building?

A No.

THE COURT: What do you mean by "building"?

MR. HOULIHAN: The new Federal Building.

THE COURT: That is the first time that has been referred to.

Q So there was no review of Federal agency expenditure money by the Planning Board, is that correct?

A For this building?

Q For this building.

A Not to my knowledge.

Q Have there been any other Federal agencies, and you mentioned the Corps of Engineers' recommendation and the Coast Guard recommendation, submitted programs for review prior to that time, was there any review by any Federal agency requested?

A Not that I am aware of.

Q You mentioned that the developmental Plan here that is, I believe, Plaintiffs' Exhibit 1, was prepared in June of 1975 but that there was a preliminary Plan in '73, I believe you said?

A Yes.

Q Were there any amendments or changes from the preliminary report and the final report?

A Yes.

Q Substantial or minor?

A In some instances there were substantial changes.

Q So if someone relied on your program, your preliminary development plan, then they may be wrong when it concerned your final development plan, is that correct?

A Depending upon the instance, perhaps.

Q They could?

A Conceivably.

Excerpts from Transcript of Testimony.
Mr. Brown for Plaintiffs, Cross by Mr. Houlihan.

Q Were there any changes or additions with regard to the United States Post Office in the final comprehensive study from the preliminary plan?

A No.

Q Specifically referring to Page 140 under "Community Development," it said: "One of a kind uses such as the Central Post Office should be discouraged from relocating outside the City."

Wasn't that added since the preliminary report?

A Well, one of the things that went in the interim between the preliminary and the final Plan was to write a section which, in fact, highlighted the Plan recommendations for the City of Rochester. The section you were referring to, I guess, are Pages 128 and 140, I think, and are part of that special section on Rochester. Specifically, in reference to the Post Office, I can't answer that question, but conceptually the Plan tried to -- in other words, the concept of the Plan to preserve and protect the vitality of Rochester as a major hub did not change.

Q Conceptually, you are saying that industry ought to stay in Rochester, but you didn't make any specific findings-- for example, in that Eastman Kodak plan to relocate out in Gates is bad and that a one of a kind facility ought

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to remain in the downtown Rochester area? You are making specific findings except as regarding the Post Office, is that right?

A I'm not sure I understand.

Q The fact that on Page 140 that you say, "The Central Post Office should be discouraged from relocating outside the City," that specific finding in your report was added subsequent to your original Plan, is that right?

A It may have been, but we did make a statement pertaining to preservation of region-serving uses within the City.

Q What I'm concerned about is that you testified on direct examination that the first time that you became aware that the Post Office was going to build a facility in Henrietta was in July of 1975, is that an accurate statement?

A That's right.

Q And yet between the time of your preliminary report in '73 and the final report in June of 1975, you added this specific finding with regard to relocating? How do you explain that?

MR. STUMPF: I object, Your Honor. He is putting words in the witness' mouth. The question has been asked and answered

several times, and I think the answer is he is not sure.

THE COURT: He isn't putting words in his mouth. I asked him to explain. He hasn't told him what he wants to put in the explanation. Objection is overruled.

THE WITNESS: In the preliminary Plan, we made the statement that region-serving or one of a kind uses should be maintained within the City.

THE COURT: But you made no reference to "Post Office"?

THE WITNESS: I don't think we made reference to any in the definition of "region-serving." I don't think we defined it.

Q Did you specifically make suggestions of the Museum and Science Center and the Eastman Theatre and buildings like that?

A In the preliminary Plan?

Q Yes.

A We may have, yes.

Q What I am trying to point out is that this Plan in June of 1975 referred to the relocation of the Post Office because you knew the Post Office was going to relocate, isn't that right?

A I heard over the years that the Post Office had been considering moving from downtown but nothing was ever specific in terms of where they were going or when, in fact, they were going to go.

Q By "it wasn't specific," you mean it was in the newspaper but the Planning Board itself was never notified, is that what you mean?

A Well, from what I had read in the papers as I think back, there was nothing specific to notify the Board about.

Q Wouldn't an announcement in 1974 that a plan to relocate south of the City indicate that the Postal Service was planning to relocate south of the City?

A Yes.

Q And you weren't aware of that -- the Planning Board was not aware of it?

A I cannot within certainty say that I was aware of that particular instance in 1974.

Q I'm speaking now of the Planning Board itself. You have been on the Planning Board since 1968, so presumably you

were aware of what the Planning Board knows, is that accurate?

A As far as I can tell, the Planning Board did not know then.

Q And the announcement that they had purchased forty-three acres of land in July of 1974, that also didn't put the Regional Planning Board on notice that the Post Office was planning to build a facility out there?

A I was not aware of that.

Q When you say, "I was not aware," you mean the Planning Board was not aware of it?

A I'm talking for myself.

THE COURT: Was that announced in the press?

MR. HOULIHAN: Yes, it was, Your Honor.

THE COURT: You are going to prove that it was?

MR. HOULIHAN: Oh, yes, Your Honor.

Q Who is Stuart Denslow?

A He is the former Executive Director of the Regional Planning Board.

Q During the period of time for the consideration and con-

struction of this new facility in Henrietta, was he your boss?

A Yes.

Q And he is a member of the Planning Board?

A He was a staff director of the Board.

Q And he has similar responsibilities as you do with regard to developing the Comprehensive Plan which was the original delegation of authority to your Planning Board?

A He was my supervisor.

Q Would it come as a surprise to you that the Planning Board knew in February of 1974 that the Post Office planned to relocate, by carbon copy of a letter to Stuart Denslow?

A Yes.

Q Would that change your thinking with regard to whether the Planning Board knew of the planned relocation?

A Are you talking about the initial Planning Board, or are you talking about an individual?

THE COURT: The knowledge of the Executive Director of the Planning Board, would you call that individual knowledge or knowledge of the Board?

A I would call that an individual knowledge.

THE COURT: Suppose you got exact notice of some fact that was pertinent, would you call that notice to you but not to the Board?

A I think it would be incumbent to make the Board aware. The Board is a legal body and not an individual.

THE COURT: Sure it is a legal body. It has an Executive Director. Are you saying that notice to the Executive Director isn't notice to the Board? Is that the tenet of your testimony here?

A It probably should be, yes.

THE COURT: What?

A It should be.

THE COURT: What should be?

A It should be also a notification to the Board.

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q As a matter of fact, Mr. Denslow was the one that signed these letters regarding the disapproval of the construction, is that right?

A Yes.

Q And throughout these letters it talked about "belated

A-95 Review," and referring to the fact or to the allegation that the Planning Board just didn't know anything about this construction, is that what you are saying?

A About the construction, no.

Q About the plan or the construction?

A You would have to restate the question.

Q Would it be a fair statement to say that if Denslow knew about the construction, the planned construction, and if Denslow knew about the planned relocation, that the Planning Board knew?

A Under those circumstances, yes, sir.

Q If they required any additional information, they should have requested it at that time, is that right?

A If there was something specific, yes.

Q Now you mentioned in your direct testimony that there was certain information needed in order to conduct a review. Would you tell me again what that information would be?

A Well, certain basic information.

Q What is that?

A Cost, size of the project, land area required, and population served potential. These are basic questions that are necessary.

Q Would it come as a surprise to you that a public announce-

ment --

THE COURT: Never mind whether it would be a surprise or not. Just tell him about it.

Q Were you aware that in January of 1974 that the Postal Service made a public announcement that it intended to relocate its facilities somewhere south of the City?

A It would come as a surprise to me, yes.

Q And in July of 1975, when it purchased forty-three acres, and that is at something like 1.6 million dollars, were you aware of that?

A It first came to my attention in the release of July of '75.

Q And are you generally aware of the area served by a Post Office?

A The specific service area of an individual Post Office?

Q Yes.

A Probably not.

Q When you think of a Post Office, what is it that you think of?

A Delivery of mail, processing of mail, shipment of mail.

Q You are not talking about customer service at all, then?

A Certainly. That would also be included.

Q What do you consider more important regarding development?

A You can't have customer service without the shipment and processing of mail.

Q Would you have any problem with the fact that the Postal Service is going to maintain a Main Post Office downtown for the service of the public?

MR. STUMPF: I object to that on the basis that it assumes facts not in the record.

THE COURT: Objection is overruled.

(Last question read.)

A Yes.

Q Why would you have a problem with that?

A Because of the impact on jobs within the City, for one thing.

THE COURT: He said of a Post Office downtown, not some place else, but downtown.

THE WITNESS: I thought you talked about the customer service.

Q I'm talking about customer service, not processing.

A I am assuming that customer service would only involve a small share of jobs as compared to the total --

Q So you are saying this is an economic consideration?

A Yes.

Q Any environmental considerations?

A Yes.

Q What?

A As I would define in my own mind economic considerations as to what the impact of that change in the downtown area on the immediate community, and that would be an environmental impact, too. I don't construe environment strictly in the physical sense, air, water and so forth, but socio-economic, and environment of the business community in Rochester to me, that is an environment factor.

Q Do you have any specific factors with the environmental impact with the construction out in Henrietta, the new facility?

A Do I have any problems with it?

Q Yes.

A Not directly. There are some things that might have been done or might have been looked at that were not addressed in the assessment.

Q But this is a kind of a semi-industrial area that they are building in. There is a buffer zone between the closest residential area, and there were considerations

made to the ecology of the area, drainage, assessments made of that?

A To an extent, yes.

Q You are claiming that there was something more that could have been done?

A Yes.

Q Do you claim that they just totally ignored an environmental consideration out in Henrietta?

A I wouldn't say they totally ignored it.

Q You wouldn't say they were arbitrary in choosing this site?

A Well, I have asked to see the site selection to see how they determined that site, and I have not received that.

Q You did read the actual assessment?

A Yes.

Q And you are aware of the considerations that were made in that assessment, is that right?

A Considerations in terms of --

Q Considerations in terms of environment.

A Yes.

Q And would you conclude on reading that the United States Postal Service totally abused its discretion and acted arbitrarily in choosing that site?

MR. STUMPF: I object. It calls for a legal conclusion, Your Honor.

THE COURT: Objection is overruled.

THE WITNESS: One of the purposes of NEPA is to look at alternatives and to determine the potential environmental impact of alternatives in selecting a site. Here was an instance in which we had a site, a single site, with an environmental assessment at that site.

Q Mr. Brown, you are begging the question. I asked you a specific question. Do you think that the Postal Service in choosing the site in Henrietta where construction is now twenty per cent complete, abused its discretion and acted arbitrarily in selecting that site?

A I think the Postal Service did not coordinate and communicate its findings on that site in making a negative declaration in that regard, yes.

Q What do you mean "did not coordinate its findings"? You mean that it didn't consult with the Planning Board?

A Not only the Planning Board, the City of Rochester and the Town of Henrietta.

Q It wasn't constructed in the City of Rochester.

A I don't think you can separate the considerations.

Q You can certainly separate where the construction is taking place, can't you?

A Did they coordinate with the Town of Henrietta?

Q Did you know that they didn't?

A Not on the assessment, no. Yes, they did not coordinate, to the best of my knowledge --

Q How about on site selection? Do you know anything about that, whether they coordinated with Henrietta?

A I know the Town of Henrietta was not happy with the selection of that site.

Q For what reason?

A Because they had planned that area for industrial development.

Q Because it would take it off the tax rolls, isn't that right?

A That was their principal objection.

Q That was their principal objection?

A Yes.

Q Economic and not environment, is that right?

A That's right.

Q Assuming other sites were considered by the Post Office prior to the time it selected the specific site that it

is now constructing its building, would you have any objection to the construction of that building, or do you think that the Postal Service totally abused its discretion in determining that there was no environmental impact on the construction of the new building?

A How do you define "totally abused"?

Q Did they just ignore environment?

A I think they took it on themselves to make a decision that there was no environmental impact building on that site.

Q And who is supposed to make that decision?

A Perhaps they should make that decision, but I don't think they should make that decision on a solitary basis, and I think the governments involved should have an opportunity to comment and participate in making that decision.

Q Isn't it a fact that you are really just miffed, that the Board is miffed that the Postal Service didn't consult the Planning Board all along the way?

A No, I am not miffed.

Q You are not miffed?

A No.

Q How would the United States Postal Service, in making its determination in 1974 to relocate, in buying the property in July of 1974, how would they be able to coordinate this

with the Comprehensive Development Plan that was published in this, a full year after they had already made the purchase?

A But the Plan was in process.

Q But you told me previously that there was substantial changes from your preliminary report?

A Yes, there were changes.

Q And there is no problem that the new construction is certainly within the corridor of recommended development?

A It is within a development corridor, yes.

Q What are the environmental problems?

A Where?

Q Involving the construction of the facility in Henrietta.

A The things that I saw as shortcomings?

Q Right.

A Two things come to mind immediately that I think should have been included and presented, and one would have been the impact of the relocation on consumption of energy, and secondly, the impact of that relocation on growth and development within the immediate area of Henrietta.

Q Isn't it a fact that impact on growth and development of the Henrietta area was measured in that assessment in terms of the development of the area consideration of the

housing project south of the new facility, discussions of the industrial complex there, the development of Jefferson Road as being an industrial area? Isn't that a fact that that was in that assessment?

A What housing development to the south?

Q Residential development.

A Just in general?

Q Just in general, residential, yes.

A I'm talking about what new development might be generated by the relocation of that facility, not necessarily its impact on what is already there.

Q So you are saying they should have evaluated what --

A -- what is the net result of their action in terms of new development.

Q You mean if a restaurant decided to relocate out there because the Post Office built its facility, is that what you mean?

A I don't think you can correlate a restaurant with a facility of this nature.

Q Why?

A Because of the size and the difference.

Q Well, no. You are saying that subsequent growth -- what subsequent growth would be measurable?

A Potential relocation of people who might work for the Post Office to the south to be closer to their place of employment.

Q So what you are talking about is economics again? You are talking about people moving?

A Also, it is environment, because it would assume new construction, and not only in housing, in roads, extension of public utilities to serve the new construction.

Q Henrietta is a pretty developed town, isn't it?

A I would probably say it is only a third developed or less, actually.

Q In terms of the area around the construction site, we have some major industry there. We have a lot of housing.

A That's right, but I don't think we can look at this particular development or any individual particular development on its own merit. I think the point that needs to be considered is what are the secondary impacts of such a development.

Q Do you have any quarrel with the fact that the Postal Service has done the right thing to consolidate its processing of mail in one facility?

A No. I probably think that would be a good objective.

Q That is a pretty good business judgment, then?

A Perhaps, yes.

Q And wouldn't the City of Rochester benefit if a building that was previously tax exempt started to pay taxes?

A Assuming that that could happen.

Q This one of a kind facility that you described the Main Post Office as being, why do you say it is a "one of a kind facility"?

A In your own words you said it was a single operation for mail processing.

Q But if it is too small, then it is not any good, isn't that right?

A (No response.)

Q If the employees that work there are working in sub-standard conditions, if mail can't be processed quickly in accordance with the requirements of the Postal Service, then that building is just inadequate, isn't that right?

A It would probably be deficient, yes.

Q Would that building serve any other use other than a Main Post Office?

A I don't know.

Q Mr. Brown, in Plaintiffs' Exhibit 3 in evidence, Mr. Denslow points out: "This review had been conducted after major decisions about the project had been made and con-

struction begun. This occurred because the U. S. Postal Service failed to submit the project for A-95 Review as was required and as required under environmental review procedures of the National Environmental Policy Act, Section 102(c)."

Are you familiar with that Act, the National Environmental Policy Act?

A In general, yes.

Q Are you familiar with the requirements of Section 102(c)?

A Yes.

Q Now what are those requirements?

A To consider the environmental impact of construction activities and to evaluate alternatives to consider potential environmental impact.

Q It is a fact, is it not, that that is not required until it is determined that there is a major Federal action and that it does have a significant impact on human environment?

A That's right.

Q So that if the answer to either one of those requirements is "No," then all of these review procedures don't apply, isn't that right?

A The question I made before was --

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Q Is that right? Would you answer the question and --

A Repeat the question.

Q If it is not a major Federal action, or if the action does not significantly affect the quality of the human environment, then isn't it a fact that these review procedures under NEPA just don't control?

A Yes, that's right.

Q Is it a fact that the property where the new facility is being constructed is zoned for the use that it is being constructed there?

A (No response.)

Q There was no change in zoning, is that right?

A I don't think the Federal Government would have requested a change in zoning to accommodate a facility.

Q My question was --

A To the best of my knowledge, the area was zoned for industrial development.

Q And that is consistent with the use that the Postal Service is making of the area?

A In terms of the Town's zoning ordinance?

Q Yes.

A I don't know.

Q You mean in your review you didn't consider whether it was

zoned residential or industrial?

A It was zoned industrial. That does not necessarily mean that they would permit public buildings within an industrial zone.

Q But this is an industrial facility, semi-industrial facility, isn't that right?

A I don't know. I don't know how you would define "semi-industrial." To me, it is a public building.

Q It is a public building?

A Yes.

Q Do you think its use is inconsistent with the zoning of Henrietta?

A Under normal circumstances, no.

Q And doesn't the zoning of a town necessarily consider the whole development plan of that town?

A Yes. The development plan of that town is industrial.

MR. HOULIHAN: Thank you.

REDIRECT EXAMINATION

BY MR. STUMPF:

Q Mr. Brown, I asked you before if you had reviewed the entire Planning Board's file pertaining to this matter, is that right?

A Yes.

* * * * *

Rochester, New York

Thursday, February 19, 1976

2:00 P.M.

- - -

MR. STUMPF: Would you mark these for identification?

(Plaintiffs' Exhibits 4 through 16 marked for identification.)

M A R G A R E T A. E L Y,

called as a witness by the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STUMPF:

Q Could you state your full name for the record, Miss Ely?

A Margaret A. Ely.

Q What is your occupation, Miss Ely?

A Assistant Planner at the Genesee-Finger Lakes Regional Planning Board.

Q How long have you been employed by the Planning Board?

A Six years.

Q And what are your primary duties and responsibilities with the Planning Board?

A I am primarily responsible for the supervision of the A-95 Review responsibility.

Q How long have you been doing or supervising A-95 Reviews?

A About two and a half years.

Excerpts from Transcript of Testimony.
Margaret A. Ely for Plaintiffs, Direct by Mr. Stumpf.

Q How long have you been working with the A-95 Review process at the Planning Board, either supervising or otherwise?

A Six years.

Q Now in that capacity have you become familiar with the A-95 rules, which have been mentioned in the previous testimony here today?

A Yes.

Q Do you know of your own knowledge the statutes pursuant to which those rules have been promulgated?

A Yes.

Q Could you tell us what those statutes are?

A The Intergovernmental Cooperation Act and the National Environmental Policy Act and Demonstration Cities and Metropolitan Development Act.

Q Could you tell us what types of projects are subject to review under those rules?

A Projects under Part 1 are projects which are submitted by local government agencies for Federal funds under Part 2, direct Federal development projects.

Q Do the A-95 rules themselves mention any specific Federal agencies to which the A-95 rules apply?

A Specifically for development? No.

Q In the normal course of events, in the Board's conducting

A-95 Reviews, how do projects to be reviewed come to the Planning Board's attention?

A They are submitted by the project applicant or the Federal agency in the case of direct Federal applications.

Q So is it fair to say, then, that the A-95 Review process is initiated not by the Planning Board but by the applicant?

A Correct. It is a response mechanism.

MR. HOULIHAN: I didn't hear that.

(Last question and answer read.)

Q Do you know approximately how many A-95 Reviews are conducted each year by the Planning Board?

A About one hundred and fifty.

Q Since you have been supervising the A-95 Reviews for the Board, do you know approximately how many direct Federal developments have been reviewed under A-95?

THE COURT: I don't know why I have to know this. I'm interested in this case, and not in others.

Q Now, Miss Ely, have you reviewed the entire Planning Board file in connection with this A-95 Review?

A Yes.

Q Can you tell us when you individually first became aware

of the Postal Service's plans or proposals to construct a facility in Henrietta?

MR. HOULIHAN: Objection, Your Honor. If they are speaking about an A-95 Review on the basis of the Regional Planning Board, to talk about her specific knowledge of the construction, I think is misleading. They should be talking about--

THE COURT: It is not critical. The important thing is when did the Planning Board have notice of it, not some individual in the Planning Board had notice.

Q We will go at it that way.

What is the date of the first document in the Planning Board's file pertaining to the Postal Service's action, which is the subject of this lawsuit, if you know?

A I don't know.

Q Is this the contents of the Planning Board's file that you and I have reviewed together?

A Yes.

Q Is that the entire file, to the best of your knowledge?

A To the best of my knowledge.

* * * * *

Senator Javits, Senator Buckley, Representative Conable, Representative Horton, Mayor Ryan --

THE COURT: I don't care who else it was sent to. It was sent to the Director.

MR. DIGNAN: A copy was directed from Mr. Chiarella, the President of Midtown Plaza Company, to the Director.

THE COURT: That is all I am interested in. I don't care whether it was Senator Javits or anybody else. I'm interested in whether the Planning Board got it.

MR. DIGNAN: There is an indication on this copy, which we obtained from the City's files, that a copy was sent to Mr. Stuart Denslow. That is true, Your Honor, but that is to explain where we got the copy, from Mr. Stainton's affidavit.

(Last question and answer read.)

DIRECT EXAMINATION CONTINUED

BY MR. STUMPF:

Q In any event, Miss Ely, how did you learn of the Postal

Service proposal to relocate from downtown Rochester to Henrietta?

A I learned through the news media in late July, '75.

Q And that was by reading a newspaper article?

A Correct.

Q And do you recall what the article said specifically?

A As I remember, it said that the Post Office would shortly be letting bids on the new facility in Henrietta.

Q Did the article mention, to the best of your recollection, the disposition or use to be made by the Post Office of the present downtown Post Office?

A I don't believe that it did.

Q When did you first learn of the existence of an environmental assessment pertaining to this project?

A In late July.

Q And did you review that assessment?

A Yes.

Q I'm showing you Exhibit P-4 for identification. Is this the copy of the assessment that you yourself reviewed?

A Yes.

Q And calling your attention specifically to Page 3.2 of the assessment, does that page indicate the size of the proposed facility?

A Yes.

Q Does that same page also indicate what portion of the site will be used by the Postal Service?

A Yes.

Q Could you read that paragraph for us that contains that information?

A (Reading): "The facility itself is quite large. The main building encompasses 371,196 square feet, of which 204,700 square feet is workroom, and 26,350 is platform. This figure also includes 61,630 square feet of enclosed carrier parking. The buildings alone cover 8.9 acres, or twenty per cent of the site. Paved areas for employee public and delivery vehicle parking will cover 14.3 acres, or thirty-three per cent of the site. In total, 23.2 acres, or approximately fifty-four per cent of the site will be developed."

Q Does it mention in the assessment what use will be made of the non-developed portion of the site?

A Not that I recollect, other than landscaping.

Q To the best of your recollection, based upon your review of that assessment, did the assessment address itself in any way to the downtown Rochester area?

A No.

Excerpts from Transcript of Testimony.
Margaret A. Ely for Plaintiffs, Direct by Mr. Stumpf.

Q What area did it address itself to?

A Only the site involved, the forty-four acre parcel in Henrietta.

Q Does the assessment address itself to alternative sites at all?

A No.

Q And calling your attention to Page 5.1 of the assessment, is there contained on that page an indication as to why no alternative sites were within the realm of the assessment?

A Yes.

Q Could you read that paragraph for us, please?

A (Reading): "Alternate locations for the proposed project were not within the realm of this study. The project site is the only one known, and therefore, evaluated."

MR. STUMPF: I offer Exhibit P-4 into evidence.

MR. HOULIHAN: Your Honor, I object to the admissibility of this particular copy, because it has comments written all over it.

THE COURT: I won't regard any comments that are written in there. I

presume they are in pencil, aren't they?

MR. HOULIHAN: No. They are in ink. We have a clean copy, and we have no objection to the admissibility of this one.

THE COURT: Mark that one Exhibit 4.

(Plaintiffs' Exhibit 4 marked in evidence.)

Q Miss Ely, what did you -- and "you" meaning the Planning Board, do after your learning of the proposed Postal Service project?

A I wrote a letter to the Postmaster General in Rochester in late July -- I'm sorry -- I mean early August.

Q What was the purpose of that letter?

A To notify him of A-95 Review procedures as well as NEPA review procedures and to request that the project be submitted to the Regional Planning Board for review under those procedures.

Q I'm showing you Plaintiffs' Exhibit 6 for identification. Could you identify that for us, please?

A Yes.

Q Could you identify the document and tell us what it is

and the date of the document for the record?

A It is the letter that I wrote to Mr. Glover, Acting District Manager in Rochester for the U. S. Postal Service, explaining the A-95 process. The letter is dated August 5th.

Q So Exhibit 6 is a copy of the letter that you just mentioned that you directed to Mr. Glover requesting information?

A Yes.

Q Did the Planning Board receive a response to that letter?

A Yes.

Q And was the response oral or in writing, if you recollect?

A A written response.

Q And from whom was that?

THE COURT: Have you got it there? That is the best way of showing it.

MR. STUMPF: Would you mark this for identification?

(Plaintiffs' Exhibit 17 marked for identification.)

Q I show you Plaintiffs' Exhibit 17 and ask you to identify that letter?

A It is a letter of August 6, 1975, from Mr. Fleming of

the Rochester District Office acknowledging receipt of my letter of August 5th and stating that we will be receiving further information in the future.

Q Now did the Planning Board in fact receive additional information?

A Yes.

Q And when was the next information received by the Planning Board from the Postal Service?

A Verbally or in writing?

Q Either way.

A The next communication from the Postal Service was a phone call on September 10th from Mr. Kenyon in the Philadelphia Postal District Office.

Q Now the letter you just identified is from Mr. Fleming and is dated August 6th. Was there a telephone conversation between you and the Postal Service between August 6th and prior to September 30?

A Yes.

Q What I'm asking you is when was the first telephone conversation between you and the Postal Service regarding this project subsequent to August 6th?

A Repeat that.

Q When was the first telephone conversation between you and

the Postal Service subsequent to August 6th?

A September 10th.

Q Was the September 10th telephone call from the Postal Service the first call that you received from anyone?

A Yes.

Q To refresh your recollection, if I may, did you receive an initial telephone call approximately one week after the August 6th letter?

A Not that I remember.

THE COURT: If you've got a document that refers to it, show it to her.

MR. STUMPF: Could we go off the record for thirty seconds or so, so I can confer with the witness?

THE COURT: Yes.

(Discussion off the record.)

Q I think the pending question was whether you received a telephone call from the Postal Service on or about August 13, 1975?

A Yes.

Q And from whom did that telephone call come?

A Mr. John Kenyon.

Q In that telephone conversation, did Mr. Kenyon identify

himself by position or title?

A Yes.

Q What was that identification?

A He is the Manager of the Real Estate Division at the Philadelphia Eastern District Office, United States Post Office.

Q And as best you can recall, what was the substance of the telephone conversation between you and Mr. Kenyon on August 13, 1975? What information did he give you, and what did you say to him?

A He had received our letter from the Rochester District Office and was calling to inquire what information he should supply to the Regional Planning Board concerning the facility in Henrietta.

Q During that conversation did you indicate the type of information that the Planning Board was seeking?

A Yes.

Q Did you indicate to Mr. Kenyon the purpose for which the Planning Board was seeking that information?

A Yes.

Q And what purpose was that?

A So that the Regional Planning Board could conduct an A-95 Review.

Q During that conversation did Mr. Kenyon indicate that such information would be forthcoming?

A Yes.

Q Now after the telephone call you have just described on or about August 13, 1975, did the Planning Board in fact receive additional information from the Postal Service?

A Yes.

Q And was that information oral or in writing?

A Both. The next information was oral, but it was followed by a letter.

Q I'm showing you Plaintiffs' Exhibit 7 for identification. Could you identify that document for the record, please?

A Yes. It is a letter from Mr. Kenyon dated September 10th, 1975, in response to my correspondence of August 5th.

Q For the record, indicate to whom the letter is addressed and from whom?

A It is addressed to the Genesee-Finger Lakes Regional Planning Board.

Q From whom?

A From Mr. Kenyon.

Q Does that letter indicate any information pertaining to the site selection process used by the Postal Service in selecting the site for the new facility?

A Yes.

Q And what information is contained in that letter concerning the site selection process?

A That the process is rather involved and includes analysis of sites, sites considered based on the price of land.

Q Anything else concerning site selection process?

A "The site selection procedure is rather involved, and it includes an analysis of sites considered, based upon the price of the land."

Q Anything else concerning site selection process?

A Yes. "The cost of site preparation and the effect of the location on transportation costs."

And it goes on to say that all of these factors are considered in the Postal Service making its final determination on the site.

Q Now after receipt of the letter dated September 10th, 1975, which we have just discussed, what did you next do in connection with your A-95 Review process?

A The next step was to call the City Planning Department, the County Planning Department, and the Supervisor for the Town of Henrietta, to ask if they had an interest in further reviewing the project.

Q Why did you select those three agencies to discuss this

project with?

A Because they were the principal parties involved.

MR. HOULIHAN: I missed the three agencies.

THE WITNESS: City Planning Commission, County Planning Department and Supervisor, Town of Henrietta.

Q Did those agencies indicate that they were interested in pursuing an A-95 Review of this project?

A Yes. All of them were interested.

Q After receiving Mr. Kenyon's letter of September 10th, Exhibit 7 for identification, did you direct any other letters to the Postal Service requesting information pertaining to that project?

A Yes.

Q I'm showing you Plaintiffs' Exhibit 10. Could you identify that document for the record, please?

A It is a letter dated September 22nd, 1975, from the Regional Planning Board to Mr. Kenyon noting that we had received his information that there was a possibility that a meeting might be held concerning the project and that the Regional Planning Board had scheduled consideration of the project on October 20th.

Q Did you discuss this project further with Mr. Kenyon or anyone else at the Postal Service following your sending of the letter dated September 22, 1975?

A Yes.

Q With whom did you discuss this project?

A Mr. Kenyon.

Q Was that a telephone conversation?

A Yes.

Q Do you know the approximate date of that telephone conversation?

A About September 30th.

Q Could you tell us the purpose of the telephone conversation, or more specifically, what, to the best of your recollection, did you say to Mr. Kenyon and what did he say to you in that conversation?

A To the best of my recollection, the conversation had two major parts; No. 1 was requesting additional detailed information concerning the Henrietta facility and No. 2 was to request a meeting between the Postal employees and representatives of the Town, the City and the County.

Q By "Postal employees," do you mean Postal Service representatives?

A Representatives, yes.

Excerpts from Transcript of Testimony.
Margaret A. Ely for Plaintiffs, Direct by Mr. Stumpf

Q How did Mr. Kenyon respond to the request for a meeting?

A He responded favorably but indicated that he would have to check with his superiors in Washington.

Q During that conversation, was any more substantive information provided -- and by "substantive," I mean any more specific information pertaining to the Postal Service project itself?

A At that time I asked him for some more specific information about the site selection process, which he supplied, which was to be forwarded in written form later on. We also discussed A-95 Review process in general and talked some more about the meeting, the proposed meeting.

Q During that conversation, did Mr. Kenyon express the view that the Postal Service was not subject to A-95 Review on that project?

THE COURT: What did he say to you?

Q And pertaining to A-95?

A He said it was a general Post Office guideline that facilities under twenty thousand square feet were not subject to A-95 Review, but the Post Office had determined that the projects in excess of twenty thousand square feet were subject to A-95 Review.

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Q Did you discuss this specific project in terms of A-95 Review?

A Yes.

Q Did he indicate that the Postal Service viewed itself as subject to A-95 Review on that specific project?

A Yes.

Q Following your September 30th conversation, on or about September 30th, did you ever again discuss this project with Mr. Kenyon in a telephone conversation?

A Yes.

Q And give us your previous recollection as to the date of your next conversation?

A It would be about the 3rd of October.

Q If I could jump back just a moment to the September 30th conversation, did you ask Mr. Kenyon during that conversation as to the schedule of construction for the new facility, if you recall?

A Yes. That would have been the primary concern.

Q Do you recall what he said about the construction? Did you ask him if construction had started?

A Yes.

Q What did he say?

A That construction had not started. It was anticipated

that it would start at the end of October or beginning of November.

MR. HOULIHAN: When was that conversation?

MR. STUMPF: On or about September 30th.

Q Why were you interested in the construction schedule, Miss Ely?

A Because we wanted to complete the A-95 Review process before construction began, if at all possible.

Q Now getting back to the conversation between yourself and Mr. Kenyon by telephone on or about October 3, 1975, could you give us the substance of that conversation, to the best of your recollection?

A The first item would have been the proposed meeting with Postal officials and local representatives, including ourselves.

Q What did Mr. Kenyon say to you about that meeting?

A He was still checking with Washington to see if it would be possible to have a meeting.

Q Were any other items discussed during that conversation?

A In general, our need for the additional information to be supplied, and on the site selection process, any alter-

natives that they may have looked at, general description of what would be conducted at the facility.

Q Did he give you that information during that conversation, or did he indicate that that information would be forthcoming?

A It would be forthcoming.

Q Did you make any notes of the telephone conversation on October 3rd?

A No, I don't believe so.

Q Did you have any subsequent telephone conversations with Mr. Kenyon after the conversation you have just described, on or about October 3?

A Yes.

Q And when, to the best of your recollection, was that next subsequent telephone conversation?

A About October 8th.

Q Again, could you give us the substance of that conversation, to the best of your recollection?

A In that conversation, the first item discussed was the Postal Service had determined that it was not necessary to have a meeting in Rochester with local representatives--

Q Let me interrupt you. What do you mean by "local"?

A Local government representatives, City, County, Town,

and the second thing he explained to me something about the site selection process based on transportation requirements of the Postal Service and said the additional information would be forwarded within a week or ten days.

Q During the telephone conversation on or about October 8, did you ask Mr. Kenyon what use, if any, would be made of the present Rochester Post Office?

A Yes.

Q How did he respond to that question?

A As I remember, he said that it would be surplus property disposed of under regular procedures.

Q Did he indicate during that conversation that the Postal Service would continue to occupy that building in whole or in part?

A No.

Q Did you make notes of the October 8th telephone conversation?

A Yes.

Q I show you Plaintiffs' Exhibit 9 for identification and ask you to identify that document for us.

A That is a note of a phone call from myself to Mr. Kenyon on October 8th.

Q Is it your practice, Miss Ely, to make notes of important

telephone conversations?

A Yes.

MR. HOULIHAN: Your Honor, I object. If it is her practice, if it is the normal course of business to do that, I could understand that, but just the practice of making notes is not a legal basis--

THE COURT: What is the difference between practice and normal procedure?

MR. HOULIHAN: Required procedures by the planning agency, normal business records.

THE COURT: Objection is overruled.

MR. HOULIHAN: Exception.

Q In conducting A-95 Review, is it the normal course of your business --

THE COURT: I don't care if it is normal or not. If she made notes of the conversation, I'm going to receive them.

MR. STUMPF: Thank you, Your Honor.

Q After the October 8th telephone conversation, did you have any subsequent telephone conversations with Mr. Kenyon that you can recall?

A No.

Q Did you, in fact, receive and"you" again meaning the Planning Board, receive any additional written information from the Postal Service?

A Not until much later.

Q Did you make a written request for such additional information?

A Yes.

Q I'm showing you Plaintiffs' Exhibit 11 for identification and I ask you to identify that document for the record.

A That is a letter from myself to Mr. Kenyon dated October 29, 1975, noting that we were in the process of doing an A-95 Review and that he had indicated he would forward information to us outlining the information that we had requested and nothing that we had not received the information.

Q Miss Ely, did the Planning Board receive any written comments from the other local planning authorities to whom you called this project to their attention?

A Yes.

Q I'm showing you Plaintiffs' Exhibit 13 for identification and I ask you to identify that document, please.

A It is a memo from the Town of Henrietta to the Regional

Planning Board indicating that they requested a meeting with the Postal Service and commenting that they would welcome the addition of the facility to the Town of Henrietta provided it was located in another area.

Q What is the date of that communication?

A October 9, 1975.

Q I'm showing you Plaintiffs' Exhibit 14 for identification and I ask you to describe that for us?

A It is a letter from the Monroe County Planning Board, dated November 7, to Dr. Denslow, noting the Monroe County Department of Planning's concerns about the Postal facility, recommending that the project be denied approval until some of the concerns had been resolved.

Q What are their concerns mentioned in the letter and what reasons are given for disapproval by the Monroe County Department of Planning?

A The concerns mentioned in the letter are the effects of abandoning the downtown facility, its effects on employment downtown, and the general vitality of the City of Rochester as the core of the metropolitan area. And No. 2, what use will be made of the present facility in downtown. And No. 3, is it feasible to renovate or redesign downtown Postal facility, and they note that in order to conduct

an adequate review that the answers to those questions are basic.

Q And did we note the date of that Exhibit?

A Yes.

Q And that is November 7, 1975, correct?

A Yes.

Q Are any other factors given for the disapproval by the Monroe County Department of Planning?

A Yes.

Q Can you tell us what those are?

A "1. The proposed facility is contrary to the Monroe County Comprehensive Plan."

Q Let me interrupt you there. That is a separate document from the Genesee-Finger Lakes Comprehensive Regional Plan, is that correct?

A Yes.

Q Go ahead.

A "2. The environmental assessment, which was prepared for the proposed facility, is inadequate, and in our judgment the assessment fails to conform with the intent of the National Environmental Policy Act.

"3. The Postal Service may have violated certain procedural requirements of the A-95 process.

"4. Serious reservations on the proposed facility have been expressed by the two municipalities most directly affected, namely, the City of Rochester and the Town of Henrietta."

Q Anything else?

A No.

Q I'm showing you Plaintiffs' Exhibit 15 for identification, and I ask you to describe that document for us?

A It is a memo from the City Planning Commission, dated November 13, to the Regional Planning Board, which identifies City Planning Commission concerns. Those concerns are as follows:

"1. Negative effect on employment opportunities and on vitality of downtown Rochester.

"2. Disposition of the present downtown facility.

"3. Lack of study feasibility of renovating or redesigning the Postal facility."

They also requested a meeting.

Q Did the City Planning Commission approve or disapprove of the project?

A They disapproved.

Q Did the Planning Board receive any subsequent written information from the Postal Service? And by "subsequent"

I mean after September 10, 1975, letter, which we have already discussed?

A Yes.

Q I'm showing you Plaintiffs' Exhibit 12 for identification and ask you to identify that and indicate if that is the subsequent written information that the Planning Board received?

A Yes. It is a letter dated November 13th to myself from Mr. Kenyon, I believe, in response to the previous request that the Planning Board had made for information.

Q Does that letter contain any information as to the use to be made of the present Rochester Post Office?

A Yes.

Q What information is contained in that letter on that subject?

A In answering the question relative to the proposed --

Q I'm sorry, but let me interrupt for just one second, and ask you to identify the page and the paragraph from which you are reading.

A It is Page 3, Paragraph (d):

"In answering your question relative to the proposed disposition of the existing Postal facility, one must also consider that this is likely the real concern of downtown

area and perhaps the Chamber of Commerce. Whenever the Postal Service locates the Mail Processing Facility on the periphery of a community of the size of Rochester, it is always conscious of the fact that the downtown area must continue to have the same financial and customer services that it had been accustomed to. A facility adequate to serve the downtown area will be available to the community. It will be an improved facility that will offer better service to the downtown community.

"The existing Postal-owned building most certainly will be surplus to the needs of the Service, and as such, will be offered for disposition under a standard procedure. Federal Government agencies are solicited to determine whether or not they have a need. This is followed by an inquiry to the State, County and local government. If all have no interest in the building, it is then placed on the market for public bid."

Q And upon what date was that letter received by the Planning Board?

A November 17th.

Q And on what date did the Planning Board meet to consider its final action on the proposed project?

A November 17th.

Q Do you know, Miss Ely, of your own knowledge, if the Planning Board considered the letter you just read from at its meeting on November 17, 1975?

A Yes.

Q Did they have that information before?

A Before?

Q Before the meeting?

A Some staff members and some Board members saw the letter prior to the meeting.

Q But it was received on the day of the meeting?

A Yes.

Q I'm showing you Plaintiffs' Exhibit 2 in evidence. Is that the report of the Planning Board, the final report, pertaining to this project?

A Yes.

Q Could you tell us, Miss Ely, what information the Planning Board had received from the Postal Service pertaining to the use to be made of the present Rochester Main Post Office prior to the time of the Board meeting on November 17th?

A None, other than the paragraph that I just read.

Q And also you mentioned that there was discussion of that subject in a telephone conversation?

A Yes.

Q That was the total body of information the Postal Service had provided pertaining to the use to be made of the present Post Office, is that correct?

A Correct.

Q Now subsequent to the Planning Board meeting on November 17th, has the Planning Board received any other written information from the Postal Service pertaining to the A-95 Review of this project?

A Yes.

MR. STUMPF: Would you mark this for identification?

(Plaintiffs' Exhibit 18 marked for identification.)

Q I'm showing you Plaintiffs' Exhibit 18 for identification. Could you identify that for the record, please?

A It is a letter dated January 9th from Mr. Kenyon to myself.

Q And does that letter contain any information pertaining to A-95 Review Postal Service projects?

A Yes.

Q What does it state in that connection?

A It says: "At this time the Postal Service by policy has been subject to the provisions of A-95 only on buildings

in excess of 20,000 square feet. The matter of the Postal Service's participation in A-95 is under review, and it is suspected that future participation will be on a wider basis."

MR. STUMPF: At this time I would offer the following Exhibits into evidence, Plaintiffs' Exhibits 6, 17, 7, 10, 9, 11, 12, 13, 14, 15 and 18.

THE COURT: What is Exhibit 18?

MR. STUMPF: Exhibit 18 is the letter dated January 9, 1976.

MR. HOULIHAN: I have no objection except to the one Exhibit, Your Honor, and will provide a clean copy and then we will have no objection to that being admitted. I have a copy of the one I objected to, which is Plaintiffs' Exhibit 12.

MR. STUMPF: As long as we can stipulate to the receipt by the Planning Board on the date indicated.

MR. HOULIHAN: Yes.

MR. STUMPF: And the date indicated being November 17, 1975.

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THE COURT: You are substituting that, then, for Plaintiffs' Exhibit 12 now marked?

MR. STUMPF: That's correct.

THE COURT: They are received in evidence.

(Plaintiffs' Exhibits 6, 7, 9, 10, 11, 12, 13, 14, 15, 17 and 18 marked in evidence.)

MR. STUMPF: That concludes my direct examination. Thank you.

(Recess from 3:05 P.M. to 3:30 P.M.)

CROSS EXAMINATION

BY MR. HOULIHAN:

Q Miss Ely, has the United States Postal Service ever submitted an application for A-95 Review of this particular project?

A Not except in response to our request.

Q In other words, the Regional Planning Board was the one that decided to conduct the A-95 Review?

A Yes.

Q Postal Service never requested it?

A Right.

Excerpts from Transcript of Testimony.
Margaret A. Ely for Plaintiffs, Cross by Mr. Houlihan.

Q And in your experience since 1968 with the Genesee-Finger Lakes Regional Planning Board, has the Postal Service ever requested an A-95 Review?

A This is the only project that has ever been submitted by the Postal Service.

Q And that one wasn't submitted by the Postal Service?

A Correct.

Q The answer is "No," they have never submitted anything for review?

A Correct, right.

Q You cover an eight-county area, is that correct?

A Yes.

Q Are you aware how many Postal facilities are in that eight-county area?

A No.

Q Are you aware how much construction is being done in any sites for Postal stations and Postal facilities in the eight-county area?

A No.

Q What is the basis for your opinion that the Postal Service must submit to an A-95 Review?

A The regulations of Part 2 of the A-95 Circular.

Q And the Intergovernmental Cooperation Act?

A The Circular is based on the Intergovernmental Cooperation Act, but it is implemented by the Office of Management and Budget.

Q Would it be a fair statement, then, that if the Intergovernmental Cooperation Act does not apply to the Post Office that the regulations don't apply to the Post Office?

A I don't know.

Q If the Postal Service is exempt from complying with that statute, would there be any reason for them to submit to any A-95 Review before your Board?

A Yes.

Q Why?

A Because the A-95 Circular also implements the National Environmental Policy provisions.

Q And the National Environmental Policy Act only is implemented with regard to meeting with local agencies and Planning Boards if there is a major Federal action and if there is a significant impact on the human environment, is that correct?

MR. STUMPF: I object, Your Honor. It calls for a legal conclusion.

THE COURT: I sustain the objection. That gets down to a legal discussion.

MR. HOULIHAN: Your Honor, she is the one that suggested the relationship.

THE COURT: I know she did, but it is not up to her to interpret the statute or what it means.

Q Is it fair to say, then, Miss Ely, that you don't know why they ought to submit the A-95 Review -- you just think it would be a nice thing?

MR. STUMPF: I object to it as argumentative.

THE COURT: I think so, too. I will sustain the objection.

Q In your experience as Supervisor of the A-95 Review, have you any other projects built by government agencies and submitted to you for evaluation and consideration?

A Yes.

Q And what projects are those?

A Most recently the Navigation Towers in Seneca County, which were proposed by the Coast Guard, and prior to that there had been several flood control projects submitted by the Corps of Engineers.

Q And any from the Government Services Administration in connection with this building, the construction of this

building that we are in?

THE COURT: You mean this building, the United States Courthouse and Federal Building?

MR. HOULIHAN: Yes.

THE WITNESS: No.

Q Were you aware of the construction of this building?

A Yes.

Q And you didn't perform an A-95 Review with regard to the construction of this building, the new Federal Building, did you?

A No.

Q I believe you testified on direct examination that the first you learned about the project in Henrietta, the construction of the new Postal facility in Henrietta, was in July of 1975?

A Yes.

Q And you hadn't heard of that prior to that time?

A No.

Q Are you talking about you personally, or are you talking about the Board?

A Myself personally.

Q So you don't know what the Board members knew?

A Correct.

Q And it is possible, is it not, that other members knew of it?

A It is possible.

Q And did anyone ever suggest to you that they knew about it prior to the time that you learned about it?

A No, because then I would have learned about it earlier.

Q It seems that Mr. Brown didn't know about it, and yet Mr. Denslow received letters and information concerning the construction?

A Mr. Brown and myself can only learn what Mr. Denslow knew, if Mr. Denslow tells us.

Q So it is possible, then, that the Planning Board knew as far as the Executive Director goes, but he just didn't communicate it to you people?

MR. STUMPF: Could I have the last question read?

(Last question read.)

Q Have you seen any other news articles concerning the construction of the facility in Henrietta?

A Well, after the process started, I have seen several.

Q Did you see any before that?

A I don't remember seeing any before that.

Q And you have also lived in the City of Rochester or Monroe County?

A Yes.

Q And you subscribed to the newspapers?

A Yes.

Q Did you participate in the preparation of the preliminary report, Regional Development Plan, of the Genesee- Finger Lakes Regional Planning Board?

A Only very peripheral.

Q This was in 1973, is that right, and you had been employed there for three years?

A Yes.

Q What do you mean by "peripheral"?

A Peripherally, because my function at the Board is administrative, regarding A-95 and similar procedures, Federal grants. It is not a Planning function wherein I work on the development of the plans.

Q Does the whole Board meet when they approve this particular Regional Development Plan? Did the whole Board meet and approve it?

A Yes.

Q And did you read it?

A Yes.

Q Before it was approved?

A Yes.

Q So you are aware of its context?

A Yes.

Q And you concurred with the findings in that report?

A Generally.

MR. HOULIHAN: Would you mark this as an Exhibit?

(Defendants' Exhibit 1 marked for identification.)

Q Would you characterize this report as a comprehensive report of the area?

A Yes.

Q I call your attention to Page 35, the paragraph at the lower right-hand corner, and this talks about the development of this region with particular regard to Rochester and reads as follows:

"At the same time, however, attention was focused on a number of shortcomings and deficiencies which appear to weigh heavily on the manufacturers' minds. A significant number of firms expressed dissatisfaction with inadequate existing facilities, lack of available land for expansion, local and State taxes, a shortage of employee

housing and transportation problems."

Would you say that that was a fair study of the Rochester area, a fair report of the Rochester area?

A Not being a technical planner, I don't know that I am qualified.

Q You don't know, then?

A Right.

Q How many members of the Board are technical planners and how many do what you do?

A Of the staff of the Board?

Q Yes, the people who approve this document?

A The rest of the staff except for the clerical people are essentially planners.

Q So if they said that in there, that is probably an accurate reflection of the conditions that exist?

A Well, as experts, I guess they would know.

Q Now I believe this is your copy. It has your name on the front (indicating).

Are you aware of any portion of this Regional Development Plan, that it at all mentions the Rochester Post Office?

A Specifically, no.

Q I call your attention to Exhibit P-1, and this is, as I

understand, a revised report. It revised the previous one that I marked for identification D-1?

A Yes.

Q When was Exhibit D-1 modified? Was that modified over the two-year period that was subsequent to the issuing of that report?

A Yes.

Q Who participated in the preparation of this Comprehensive Plan?

A The Regional staff, County agencies, in Monroe and also the surrounding counties, lay citizens, the public at large, County government.

Q City Planning Council?

A Yes.

Q Were you at any meetings with the City Planning with regard to this Comprehensive Report?

A No.

Q So you are not aware of any discussions that centered around the Rochester Post Office?

A No.

Q So presumably if there is anything in here about the Rochester Post Office, there must have been some discussion about it. Would you say that is an accurate statement?

A I don't know.

Q When was the Comprehensive Plan originally presented to the Board?

A I believe June, '75.

Q That is when it was adopted. When was it prepared finally prior to that time?

A That would have been May, but I think June -- I don't remember.

Q It specifically states on Page 140 of that report, "One of a kind uses, such as the Central Post Office, should be discouraged from relocating outside the City."

Would it be fair to say that since the Planning Board made a specific mention of the Central Post Office in this report that they knew prior to June of 1975?

A No.

Q You think they just pulled this out of the air?

A I think it is quite possible. The Post Office is a one of a kind facility. They could just as easily have mentioned other one of a kind facilities.

Q But they seemed just to point directly at the Central Post Office. It didn't say anything here about Eastman Kodak moving out of the area or didn't say anything about Xerox Corporation moving out of the area or Bausch & Lomb.

It didn't say anything about that.

A The point of the statement, though, is that one of a kind facilities remained within the City of Rochester. The point of the statement is not specifically the Post Office. The Post Office is an illustration of the statement.

Q In other words you still persist that the Regional Board did not know about the relocation of the Post Office, is that right?

A Yes.

Q And that is true despite closed meetings with the City of Rochester, County of Monroe planning agencies and all of the agencies of the towns, the Town of Henrietta, that it was never mentioned, never discussed?

A I think it may have generally been discussed, but as a specific thing that is going to happen, you know, at thus and such point in time, at a stated point in time, I don't know that that was known.

Q Did the Regional Planning Board distribute this Comprehensive Plan to the Government Services Administration or any Federal agencies or to all Federal agencies?

MR. STUMPF: Which Comprehensive Plan?

MR. HOULIHAN: I'm talking about

June, 1975, Plaintiffs' Exhibit 1. Was that distributed to --

A I had nothing to do with distribution of the report.

Q Did you consult with the United States Postal Service in preparation of this report?

A I didn't. I don't know if anyone else did.

Q Is it fair to say that the only thing that you are testifying to is your personal knowledge and not the knowledge of the Board?

A Yes.

Q So then the Board could have known about this in January of 1974, and you are just saying that you found out about it and you were the one who initiated --

MR. STUMPF: I believe it is hypothetical, argumentative.

THE COURT: It is argumentative.

Q When the Board issued it, which is Plaintiffs' Exhibit 2 marked in evidence, disapproving of the facility, what were the standards used by the Board in arriving at that decision?

A The standards that we used were the general requirements of an A-95 Review and the primary question being is the project consistent with area-wide, county and local plans?

The second thing is whether it will duplicate other facilities; and the third thing is whether it was properly coordinated.

Q Did any of these standards include visiting the site?

A No.

Q You never went out there?

A No.

Q Did anybody from the Planning Board go out there?

A I don't know. I never went out there.

Q Did you communicate this report to the Town of Henrietta?

A Yes.

Q And did you communicate it to the County of Monroe?

A Yes.

Q And there is a suggestion in here that the other appropriate local government take appropriate action, such as a preliminary injunction to stop action on the project. Did you ask the Town of Henrietta to join in this suit?

A It was suggested to the Town of Henrietta the same way it was suggested to the City of Rochester.

Q The Town of Henrietta did not do it, is that right?

A That's correct.

Q And they are the only one concerned with the construction of that facility, isn't that correct?

A The only two that are directly concerned -- the County of Monroe is concerned, I would say.

Q Did the County of Monroe ask to join in that suit?

A Only in the same manner that the City of Rochester and the Town of Henrietta were.

Q And they have not joined in this suit, is that correct?

A That's correct.

Q So the Town of Henrietta, where the project is being built, which is in the County of Monroe, the two major parties that would have any interest on the environment in that area with regard to the construction are not participants in this suit?

THE COURT: There is no question about it. She doesn't have to tell me who is concerned in this suit. I know who is a party to this action.

Q You are not a plaintiff, so you don't have an opinion, is that correct, on the environmental impact of construction in the Town of Henrietta?

A I have some opinions, you know. It depends on the process that was followed, regarding the process that was followed.

Q Do you have any specific objections to the building itself, the actual construction as far as the environment is con-

cerned, or are you only concerned that the Post Office did not submit it to the Board for review?

A I am primarily concerned that it was not submitted according to procedures. But I think there are some environmental concerns that are also at issue.

Q And those are primarily concerned with the abandonment of the City of Rochester facility, is that right?

A Yes.

Q In developing this Comprehensive Plan, which is Plaintiffs' Exhibit 1, you met with the County officials, is that correct, County Planning Agency, County Planning Commission and you mentioned in your direct testimony that the proposed construction was not in accord with the County plan for development of that area, is that right?

A Yes.

Q On the other hand, it is in accord with the Genesee-Finger Lakes Regional Planning Board Plan for development of that area, isn't that correct?

A Yes. The County determined that it was not consistent with the County Plan.

Q But there is no question that it is consistent with your Plan? It is within one of the recommended developmental corridors?

A Yes.

Q There is no question that it doesn't violate the zoning ordinance of the Town of Henrietta, is that right?

A Yes.

Q Do you know, Miss Ely, on behalf of the Regional Planning Board, who authorized the filing of this lawsuit?

A The Board authorized it, I would assume.

Q Do you know when that was authorized?

A In November or December.

Q And were you aware that construction was two or three months under way at that point?

A Yes.

Q And the actual suit was not filed until January, 1976, five months after construction?

A Yes.

Q What powers does the Regional Planning Board have to prevent construction of buildings?

A (No response.)

Q I mean, what if this had been submitted to you in January of 1974 and you didn't like it? Could you stop the construction of the facility?

A Well, the end result could be the same as what happened now. According to the A-95 procedures, had it been sub-

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mitted, the whole purpose of those procedures is to resolve these kinds of issues that have been raised between the County, Town and City and the Post Office prior to the beginning of --

Q In terms of working out the problem but not in terms of preventing the Post Office from making its decision?

A Our comments are advisory.

Q The fact that they are advisory means the Post Office could reject your advice?

A Yes, right. We would still have the same recourse through the court. This suit could still be brought.

Q As I understand it, the only thing that you are complaining about in this suit is that they didn't follow A-95 procedures, and I'm saying now if they did follow them, what could you have done?

MR. STUMPF: I again object. The pleadings speak for themselves.

THE COURT: I sustain the objection. She isn't required to say what caused this suit, and that is a legal question, and she isn't responsible as to what is in the Complaint.

MR. HOULIHAN: I have no further

questions.

REDIRECT EXAMINATION

BY MR. STUMPF:

Q Miss Ely, is the relocation of the Rochester Main Post Office from downtown Rochester to Henrietta consistent with the Comprehensive Regional Plan of the Genesee-Finger Lakes Regional Planning Board?

A No.

MR. HOULIHAN: Objection, Your Honor. I think that the Comprehensive Plan speaks for itself. She has admitted she is not a planner.

THE COURT: Objection is overruled.

Q Do you know of your own knowledge, Miss Ely, at what stage of construction this building, the Federal Courthouse and Federal Building that we are in right now --

THE COURT: You mean the Federal Building and the United States Courthouse.

Q -- the Federal Building and the United States Courthouse, do you know at what stage of construction this building was in in 1968?

A No.

MR. STUMPF: That is all I have,

* * * * *

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

DIRECT EXAMINATION CONTINUED

BY MR. DIGNAN:

Q Mr. Stainton, you were discussing with us projects and developments that the City had undertaken before counsel for the Government interrupted.

A I know the map well enough so I can probably talk about it.

MR. DIGNAN: First, I will mark it for identification.

(Plaintiffs' Exhibit 19 marked for identification.)

Q Mr. Stainton, could you tell me what P-19 marked for identification is, sir?

A Let me go through it. This is an area that is showing the central area of the City of Rochester. The Inner Loop is marked in green. The Post Office is marked in red at the north side of the Inner Loop. This is 490 to the west and 490 to the east (indicating). The railroad track runs as you see here close by the Post Office. The Post Office presently has an unused underground service connection to the old railroad station. The site of the new Amtrak Station, which the City recently purchased for $310,000 for the development of the Amtrak Station,

is shown in blue. The yellow areas nearby are a series of urban renewal projects that have been carried out over the past ten years or so. Total project development costs are on the order of in excess of $200,000,000. The Federal contribution to those is on the order of $125,000, with the rest being made up with State and local funds. The closest projects are the Baden-Ormond Project, which was developed for housing an industry and the Upper Falls Project, which is a redevelopment project including industry, commercial, schools, housing.

Q Mr. Stainton, when you mentioned the Federal share, you said 125,000 -- did you mean 125,000,000?

A I meant 125,000,000, approximately.

MR. DIGNAN: Would you mark these for identification?

(Plaintiffs' Exhibits 20 through 39 marked for identification.)

Q Mr. Stainton, I show you a series of photographs marked for identification, P-20 through P-39, and starting with P-20, can you tell me whether or not it is a reasonable representation of the vicinity as pictured in that photograph, and would you tell us what vicinity it is, sir?

A This photograph shows the immediate vicinity of the Post

Office and a parking lot approximately one hundred and ten cars on the old Amtrak Station site immediately to the west of the Post Office. In the foreground is the Inner Loop highway system.

Q You referred to the parking lot. Who owns that parking lot?

A That is a City-owned lot. It is a metered lot. It contains approximately one hundred and ten spaces.

Q And the property to the north?

A The property to the north was recently purchased by the City for construction of the new Amtrak Station and related facilities.

THE COURT: Is that on Central Avenue?

A Yes, sir.

THE COURT: But, of course, it is across the street from the old station?

A The parking lot is across the street from the old station, yes.

THE COURT: The new Amtrak station?

A The new Amtrak station is scheduled to go in the immediate vicinity of the old station.

THE COURT: The immediate vicinity

* * * * *

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

A Yes, that is the Genesee Crossroads Project.

Q P-37, Mr. Stainton?

A This is the Genesee Gateway Project, a housing development within the Genesee Crossroads Project.

Q P-38?

A This is the park that is also within the project area sponsored by Lawyers Cooperative. It was actually constructed by them, but it is within the project area, and the land was acquired by the City.

Q And P-39?

A The last building shows the IBM building on State Street within the Genesee Crossroads Urban Renewal Project on land acquired by the urban renewal process.

Q Is that also your office in that building? Is that where the Community Development Office is?

A That is also where our office is, on the fourth floor.

MR. DIGNAN: Your Honor, I would like to move these photographs in evidence.

THE COURT: They are received.

(Plaintiffs' Exhibits 20 through 39 marked in evidence.)

Q Mr. Stainton, when was the first time that you became aware of the Postal Service's decision to build a facility

outside of the City of Rochester?

A About the time I came to work for the City. I believe it was in January of 1974.

Q How did you become aware of this move?

A I believe there was an article in the paper at the time, a short article that indicated that they planned to build a facility south of Rochester.

Q What, if anything, did you do when you became aware of such a move -- and including "you," I mean the City administration over which you are? Do you understand that?

A Yes. The first thing I did was to ask to review what files we had in terms of whether there had been any contact with the City officials, and the second thing we did was to request a meeting with the appropriate officials, which was arranged through Congressman Horton's office.

Q And did any official in the City, to the best of your knowledge, correspond with the Post Office prior to that meeting?

A In looking at the file there are several pieces of correspondence dating back to 1969 regarding the interest on the part of the Post Office in building a new facility.

MR. DIGNAN: Would you mark this for identification?

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

(Plaintiffs' Exhibit 40 marked for identification.)

Q Mr. Stainton, I show you P-40 marked for identification and ask you if you have ever seen that document before?

A Yes, I have seen it before.

Q What is it, sir?

A It is a letter dated January 28, 1974, to Mr. Klassen from Mayor Ryan. It expresses a concern that Mayor Ryan has along with members of the Downtown Development Committee of the City of Rochester, as well as other citizens, about the moving of the Post Office. It says: "There is concern that relocation of the Main Post Office would deal an unnecessary blow to the efforts presently made to revitalize Rochester's downtown area. For this reason, I hope the decision to relocate outside of Rochester is not an irreversible one."

Q Following that letter, was the next time you had communications with the Postal Service, was that meeting you mentioned, and "you" being the City or your department?

A Yes. There was a meeting coming out of that, and I guess the rest of it would have been through telephone conversations to make the arrangements. The meeting was scheduled for March 15th. It was held in the Manager's Office.

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

Q The City Manager's Office?

A The City Manager's Office.

Q Do you know how long that meeting lasted, approximately?

A I would guess about an hour -- my recollection is an hour and a half.

Q In preparation for that meeting, did you direct, or did you have anyone in your department have a document drawn up concerning potential sites in the City of Rochester for a new Post Office?

A Knowing that the meeting was coming, we had the staff prepare a series of seven or eight alternative locations and sites, which we hoped the Post Office would consider before they made the decision as to where they would locate a new facility. That included sites both close to the downtown area and some outlying sites.

Q Am I clear, are all these sites all in the City of Rochester

A They were all in the City of Rochester, yes.

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 41 marked for identification.)

Q Mr. Stainton, I show you P-41 marked for identification. Is this the Potential Sites for New Post Office document

which you have just previously described for us?

A Yes, it is.

Q It consists of how many pages, sir?

A It is four pages, two pages relating to identification of specific sites within the City.

Q Now at the meeting on March 15th, can you tell me who was present for the City of Rochester?

A The City Manager was present, Mr. Freedman, myself and a staff member, Neil Schulman.

Q Can you tell me who was present for the United States Postal Service?

A My notes indicate Mr. Isaacs and Mr. Fleming.

Q And the meeting started about one o'clock, is that correct?

A Yes, that's correct.

Q And did you give to the United States Postal Service representatives at that time a copy of what has been marked as P-41 for identification?

A To my recollection, yes, we did. We discussed alternative sites.

Q Would you tell me what the nature of the discussion was concerning the site as you presented it to them?

A We spent some time discussing the sites. The Post Office outlined what their requirements were, which we had not

been aware of at that time.

Q Would you stop there and tell us what they did with respect to their requirements at the meeting on March 15th?

A Well, our previous records, our early records which go back to '69 and '70, indicated that they were interested in a site of approximately fifteen or twenty acres. Subsequent to that, and prior to the meeting, we were aware that they were probably interested in somewhat greater acreage than that, perhaps on the order of twenty-five to thirty acres. At the meeting they made it clear that their minimum site requirement was for thirty-six acres. And they generally outlined that, although they did not have any details with them. We then discussed the alternative locations that they had studied. They did not have any documentation with them, other than a roadmap, which they subsequently pointed to in terms of the various areas that they were considering.

Q Was there a discussion by the City concerning the relocation as it would affect the City, and namely, the Post Office and area surrounding it?

A We reiterated our extreme concern about this relocation and the adverse environmental impact that it would have upon the City of Rochester. It was our understanding

that there were approximately fourteen hundred jobs, and that would have an impact in terms of not only the abandonment of the facility but the relocation of that payroll, the job payroll, to an outlying location. So you have two kinds of impact. You have the blighting influence of an abandoned facility on the City of Rochester and the blighting influence impact in terms of the moving of the jobs and the related income away from the center of downtown Rochester.

Q Did you express these concerns at that time to the representatives of the Postal Service?

A Yes, sir.

Q What was their reply, if any?

A Excuse me, but I would like to add a third concern that we expressed, and that was, as you have seen from the photographs, and as you know from experience, that a large number of relatively low-income people live within the City of Rochester. We were extremely concerned that taking this facility out of the City would make it more difficult for low and moderate-income people to find employment at this type of facility. This would perhaps happen gradually, but experience is the closer you are to your sources of employment, the easier it probably is to

get that employment.

Q You expressed that at this meeting, is that correct?

A Yes. We expressed all of those concerns.

Q Did the City Manager stay for the entire meeting?

A The Manager stayed at least for the major portion of the meeting. I would guess at least for an hour.

Q During which these concerns were expressed, is that right?

A Yes. The basic points covered were covered at that time.

Q And what reply, if any, did the Postal Service make to those concerns which you have just told us you expressed at this meeting?

A The Post Office without really offering anything specific in terms of documentation were adamant about the nature of the requirement for the acreage that they had stated and which I believe is on the record, of a minimum site of thirty-six acres. They base this on a program that required a one-story building and surface parking to accommodate the employees and visitors and trucks that would come to the building.

Q Did you request information from them, specific information, concerning your concerns, namely, the employees and any site studies that they had done?

A We requested it at the meeting, and they generally agreed

that they would supply that information. And then I subsequently, I believe it was March 20th, 1974, a few days after the meeting, I did send them a letter requesting the information.

Q In other words, they didn't have the information at this meeting, is that right?

A That is correct.

Q Before we get to that March 20th letter, Mr. Stainton, was there any further discussion concerning either the document before you, which is P-41, or any other items that concerned the City at that time?

A I can make two points. Generally, there was a reluctance to consider any of the sites here, primarily because some of them were considered to be too small. They were all considered to be too small. The largest one listed here is around thirty acres. They also indicated that they had looked at a site in the western part of the City, the Mt. Read-Emerson area, and they were rejecting it as not being as appropriate as some other locations that they looked at outside of the City.

THE COURT: We will recess until tomorrow morning at ten o'clock.

(At 4:45 P.M., an adjournment was taken to Friday, February 20, 1976.)

* * * * *

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Excerpts from Transcript of Testimony.
Proceedings, dated 2-20-76.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

Rochester, New York

Friday, February 20, 1976

10:00 A.M.

- - -

J O H N S T A I N T O N,

called as a witness by the Plaintiffs, being previously duly sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. DIGNAN:

Q Mr. Stainton, at that meeting March 15th, were you furnished with any architectural renderings of the new proposed facility?

A No.

Q Was there any discussion by the Post Office indicating to you anything that they had done, any type of assessment or environmental study?

A No. They only indicated that they had looked at alternative sites. They did not express that in terms of doing an environmental assessment.

Q You mentioned yesterday following that meeting that you followed it up with a letter in March, is that correct?

A Yes. I believe it was dated March 20th.

MR. DIGNAN: Would you mark this

for identification?

(Plaintiffs' Exhibit 42 marked for identification.)

Q Mr. Stainton, I show you P-42 marked for identification. Could you tell us what that document is, sir?

A It was a letter to Mr. Isaacs, in which I referred to the meeting in which we had discussed the Post Office sites, and it indicated, "As we agreed, it will be most helpful to officials of the City if you will forward a copy of your site selection studies, information on the number and distribution of your employees in the region, and photographs or plans of similar installations.

"The City Administration believes there are potential sites in the City that should be considered, since such factors as the cancellation of the Genesee Expressway and the emergent energy crisis may not have been fully anticipated by the location studies conducted for the Post Office."

As a result of that letter of March 20, 1974, which is P-22, Mr. Stainton, did you receive the information pertaining to the site requests or employment figures from the U. S. Post Office?

A No.

Q What did you receive, if anything?

A Well, we did follow up with a number of telephone conversations, and at a later date we did receive a typical facility from New Hampshire.

Q A typical facility from New Hampshire?

A That is correct.

Q Did there come a time when the City Administration contacted the Postal Service after that letter of March 20th with respect to the location of the facility in Rochester?

A The Mayor of Rochester, Mayor Ryan, did write to the Post Office. I believe it was in May, again indicating that there were potential sites available. Our efforts throughout this were to try to get the Post Office to enter into a discussion with us as to possible locations within the City, and these were continuing efforts on our part to do that.

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 43 marked for identification.)

Q Mr. Stainton, I show you Exhibit P-43 marked for identification. Can you tell me what that document is, sir?

A This is a letter from the Mayor, dated May 6th, 1974, and

reads as follows:

"I am writing to express the concern of the City about the possibility of the Main Post Office being removed from Rochester. With substantial public and private support and investment, the City has undertaken a sustained effort to improve its Central Business District, upgrade its housing stock and strengthen its industrial base. Though only forty-eighth in size of population, Rochester has the thirteenth largest renewal program, and it is also carrying out major improvements financed locally. An important goal is to increase the supply of available jobs, especially those which would be convenient to low-income families. Removal of the Main Post Office would undermine this effort, and in addition, would represent a blow to our redevelopment program."

The letter goes on to talk then about some of the characteristics. (Reading):

"Rochester has an excellent highway system connecting its Central Districts with all parts of its metropolitan area; in addition, the airport is only minutes away. As I understand it, the principal obstacle to a center-city location is the desire of the Postal Service to have about thirty-five acres for its new facility. Naturally, a

parcel of this size within the center city is not a practical possibility from a financial point of view. It would not be desirable to the City to remove this amount of land from the local tax rolls. However, the City urges that the Post Office give serious consideration to a cleared parcel fifteen acres in size within our Upper Falls Renewal Area, several blocks north of the Main Post Office."

I might say in discussions that that parcel might be actually larger than that. We are presently discussing with an industry of how large --

MR. HOULIHAN: I object to that, Your Honor.

THE COURT: I will sustain the objection.

Q Stay with the letter, Mr. Stainton.

A (Reading): "The site is adjacent to an industrial district along St. Paul Street, and is not far from the Inner Loop Expressway system. I realize that reducing the parcel to this size may not represent the optimum situation for the Postal Service, but request that you consider this seriously in the interests of the City."

Q Was there a response to that letter of May 6, 1974, which

is identified as P-43, to the best of your knowledge?

A To my knowledge, there was a brief response from the Post Office indicating that a fifteen-acre site was too small.

Q Following that response, Mr. Stainton, what, if anything, did the City do with regard to the attempts to have the Postal Service cooperate with them in keeping the facility downtown?

A We brought the matter to the attention of the City Planning Commission, which is a Commission appointed by the Council under State law and are charged with the planning review for the City. We reviewed with them the situation regarding the Post Office. There was a staff report that was presented at that time. We had also been discussing this with the Chairman, the then Chariman of the Planning Board, Mr. Nathan Robfogel, and he had communicated his concerns to the Post Office in the early summer regarding the City's concern about the moving of the Post Office.

Q Is that the summer of 1974?

A The summer of 1974.

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 44 marked for identification.)

Q Mr. Stainton, when you mentioned Mr. Robfogel as being Chairman of the Planning Board, you are talking about the City of Rochester Planning Board?

A It is a Planning Commission.

Q Planning Commission?

A Yes.

Q I show you Plaintiffs' Exhibit 44 marked for identification. Would you just identify that document, and date, to whom it is addressed and from whom it comes?

A It is dated July 19, 1974. It is to Mr. William Finn, Postmaster, Rochester, and it is signed by Mr. Robfogel and copies were sent to Mr. Klassen, Postmaster General; Robert Isaacs of the United States Postal Service; our Congressmen and Senators; Mayor Ryan; our City Manager; County Manager; County Planning Director; and the Genesee-Finger Lakes Regional Planning Board, Mr. Denslow.

MR. HOULIHAN: What was the date of that letter?

MR. DIGNAN: The date is July 19, 1974.

Q Were you aware in the fall of 1974 of any other agencies or local governments concerned with respect to the Postal Service's moving the facilities from Rochester?

A We work closely with a number of other planning bodies, including the County Planning staff and the County Planning Board. They had expressed concern about the move of the Post Office and the concurrent proposed development of the Amtrak Station in the immediate area.

Q And were you aware of any action taken by the Monroe County Planning Board with respect to what you just described, the Amtrak and the Postal facility?

A The County Planning Board passed, I believe, a resolution in the fall of 1974 recommending a downtown central location for the Post Office and Amtrak facility. I believe that was forwarded to the Post Office and other appropriate officials.

Q Do you know what the intention of that resolution was?

THE COURT: That is a pretty vague way to prove it. In the first place, he says he believes there was a resolution and he thinks it was sent to the Post Office --

THE WITNESS: May I amend that, sir? There was a resolution and it was, to my knowledge, sent to the Post Office.

THE COURT: I still say that is

a pretty vague way to prove it. If there is a resolution, it might be physically in existence.

MR. DIGNAN: You are correct, Your Honor. I have it in my left hand, and I will introduce it.

MR. HOULIHAN: I would wonder if Mr. Stainton is a member of the County Planning Board, if he is aware of the procedures used to adopt it, or whether it is just hearsay testimony.

THE COURT: I'm not dealing with that now.

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 45 marked for identification.)

Q Mr. Stainton, I show you Plaintiffs' Exhibit 45 marked for identification. Could you tell us what that document is?

A This is a letter from William Uptegrove, the Director of Planning of the County of Monroe, directed to Mr. Frederick Ray, the Vice Chairman of the Downtown Development Council,

and copies of this letter were sent to various City officials.

Q I ask you, did you receive a copy of that? Is your name on it?

A Yes. This was sent to myself as well as another member of our staff, Ms. Taylor, the Planning Director.

Q Is there an indication on there that a copy of that was sent to any of the defendants in this matter, namely, the United States Postal Service?

A Yes, sir. The Postmaster General, Mr. Klassen, and the Assistant Postmaster General, Mr. Isaacs are identified.

Q That is a three-page document, is it not, sir?

A Yes. It is three pages and it includes a resolution.

THE COURT: What?

A And it includes a resolution on the Post Office facility passed by the County Planning Board.

Q Is that what you previously testified to as your knowledge of the resolution of the attempts by the County Planning Board to get the City and Postal Service to sit down and discuss the matter further, is that correct?

A That is correct.

MR. HOULIHAN: Your Honor, I would object to testimony of the County Planning

Board and all of those planning commissions that are not parties to this suit. They have not joined, and it is not relevant whether they also contacted the Postal Service, and whether or not the Post Office contacted them or met with them, we can't determine through this witness because he just doesn't know if the Postal Service met with those particular commissions.

THE COURT: I don't know whether he does or not.

MR. HOULIHAN: He is not a member.

THE COURT: Objection is overruled.

Q Mr. Stainton, following the letter from the Monroe County Planning Board, do you know of any other action that was taken in 1974 with respect to this matter, namely, the announced intention of the Postal Service to remove its facilities from Rochester?

A No.

Q What was the next time you had contact with the Postal Service with respect to this matter following in 1975?

A In 1975 the Post Office announced that it would plan the construction, that they were letting a contract for the

facility in the summer -- I believe it was in August.

THE COURT: When was the announcement?

A In August they were letting the contract.

Q In August of 1975, is that correct?

THE COURT: You say they announced it. I want to know more about the announcement. When was it announced? Did you see it? Was it in the public press?

A It was in the public press, yes, sir.

THE COURT: Do you know what date?

A It would have been in August. They probably --

THE COURT: I don't want to know what probably happened. I can guess myself.

A Yes. It came to my attention and to the attention of the City Planning Commission in August of 1975.

THE COURT: Do you know when in August?

A The Planning Commission took an action on August 8th --

THE COURT: I don't want to know when they took an action. I want to know when the date of the announcement was, as near as I can get it.

A As near as I can recall, it was the first week of August.

THE COURT: That notice was a physical printing in a newspaper, wasn't it?

A Yes, sir.

Q And you don't know the date of the newspaper?

A I can only recall it was the first week of August.

THE COURT: Wouldn't that be in your files?

MR. DIGNAN: Your Honor, it is in the file. I'm going to introduce it.

THE WITNESS: It is in the file.

MR. DIGNAN: I'm asking him, without having to refresh his recollection, if he knew without refreshing it.

THE COURT: Never mind the technicalities. I want to know the date of the paper.

Q Prior to the announcement of the construction, had you been in receipt of what has been referred to in this matter as an assessment by the U. S. Postal Service?

A We had requested an assessment, and I do not recall without looking at the correspondence exactly what the date of that request was.

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 46 marked for identification.)

Q Mr. Stainton, I show you Plaintiffs' Exhibit 46 marked for identification. Can you tell me what that document is, sir?

A This is a letter of July 21st, 1975, directed to Ms. Taylor, who is the Planning Director within our department, and it is from Mr. Glover of the Postal Service, and reads as follows: "As requested, enclosed is one copy of the Environmental Impact Study relating to the construction of a new General Mail Facility in Rochester, New York."

THE COURT: I would like to get at my inquiry before. What was the date of that newspaper article, the announcement?

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 47 marked for identification.)

Q Mr. Stainton, I show you Plaintiffs' Exhibit 47, and does that refresh your recollection as to the date which you first were apprised of the construction of this facility

in Henrietta?

A The newspaper article is dated August 7, 1975, and it is headed, "Post Office to Cost Twelve Million Dollars."

Q Would you tell us what newspaper that appeared in?

A It appeared in the Times Union.

THE COURT: Let me see it, please.

(Plaintiffs' Exhibit 47 handed to the Court.)

THE COURT: Are you going to offer it in evidence?

MR. DIGNAN: Yes.

THE COURT: Offer it now.

MR. DIGNAN: I offer it in evidence.

MR. HOULIHAN: No objection.

THE COURT: It is received.

(Plaintiffs' Exhibit 47 marked in evidence.)

THE COURT: The important part of this, and I think this should be on the record, and I will read the first paragraph: "The U. S. Postal Service yesterday awarded the contract for that amount to LeCesse Brothers, Inc., of Rochester

to build the 400,559 square foot building on the south side of Jefferson Road at the intersection of Saginaw Drive.

The building is expected to be completed by summer, 1977."

DIRECT EXAMINATION CONTINUED

BY MR. DIGNAN:

Q Mr. Stainton, in connection with the environmental assessment that was furnished to the City, that was furnished on or about July 22nd, 1975, is that correct?

A That's correct.

Q Is that the first time you had ever received a copy of that assessment, sir?

A That's correct.

Q Can you recall what the date of that assessment was?

A It was completed approximately seven months before that.

Q Would that be approximately November, 1974?

A That's correct.

Q Now immediately after receiving that assessment, did this newspaper article appear in the newspaper which we have identified and put in evidence as P-47?

A That is correct.

Q And can you tell us what the response of the City was to

this newspaper article at the time that it appeared?

A The response was immediate. The Planning Commission sent a Mailgram on August 8th to the Postal officials and to the elected officials concerning the decision that had been reached.

Q Had you completed your --

MR. HOULIHAN: Excuse me, but this was the date before the newspaper article, the Mailgram?

A The day after.

MR. HOULIHAN: This was August 9th, and the Mailgram was --

A This was August 7th.

THE COURT: The newspaper article was August 7th.

MR. HOULIHAN: Okay. I'm sorry.

Q Had you completed --

THE COURT: Don't you divert me. He said there was a response of the City. Now let's have it.

Q Would you tell us, again, what the response --

THE COURT: Not him -- if there was a response, there must have been some-

thing in writing. They sent something to the Post Office. I want it physically introduced. Wouldn't you prefer it?

MR. DIGNAN: Yes, Your Honor. I am getting to it, but I am trying to tie in the facts at the time the announcement was made of the construction. An assessment was furnished the week before.

THE COURT: I have to take these things as they come. He said they responded and if they did, I want to know what it was. And if it was in writing, I want the writing.

MR. DIGNAN: Excuse me one minute, Your Honor.

(Pause in the proceedings.)

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 48 marked for identification.)

Q Mr. Stainton, I show you P-48 marked for identification. Is that the response by the City Planning Commission which you previously described as the newspaper article

appearing on August 7th, 1975?

A Yes. It is dated August 8th, from Chairperson Beverly Vaughan of the Rochester City Planning Commission.

Q Who is it directed to?

A It was sent to John Lintner, Senior Representative of the Office of the Postmaster General; Senator Javits; Senator Buckley; Congressman Horton and Congressman Conable.

MR. DIGNAN: I move this into evidence at this time, Your Honor.

MR. HOULIHAN: No objection.

(Plaintiffs' Exhibit 48 marked in evidence.)

Q Did you personally respond to the Postal Service with respect to the assessment that had been furnished to you on July 22nd, 1975, Mr. Stainton?

A We carried out a staff review of the assessment, and I don't believe I personally responded.

Q Did you correspond with the Postal Service in connection with the furnishing of the assessment in July of 1975?

A Yes, in terms of trying to obtain the assessment, yes.

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 49 marked for

identification.)

Q Mr. Stainton, I show you Exhibit P-49. Can you tell me what that is, sir?

A This is a letter from me to Mr. George Glover dated September 10, 1975, regarding the Environmental Assessment, to acknowledge receipt of the assessment, and to indicate, "We appreciate the opportunity to review the assessment, but we are somewhat surprised that we were not aware of its publication until June of 1975, more than seven months after its publication."

Q And did you receive a response to P-49, do you recall?

A We received a response which indicated they were referring it to their legal counsel.

MR. HOULIHAN: Excuse me, but is this in evidence?

MR. DIGNAN: Not yet.

MR. HOULIHAN: Are you moving it into evidence?

MR. DIGNAN: I will move it.

MR. HOULIHAN: May I ask a couple of preliminary questions, then, Your Honor?

THE COURT: All right.

* * * * *

in evidence, P-12, from Mr. Kenyon of the United States Postal Service to Miss Ely?

A Yes. I have seen the letter. It was submitted to us.

Q Can you tell me what the statement in there is with respect to the use of the Postal facilities as Mr. Kenyon stated in November of 1975?

A Mr. Kenyon states: "The existing Postal-owned building most certainly will be surplus to the needs of the Service, and as such, will be offered for disposition under a standard procedure."

Q Does Mr. Kenyon's letter indicate when the start of construction would be?

A It indicates: (Reading)

"The construction of the Rochester facility is scheduled as follows:

"1. Start the structural steel -- November 4, 1975."

Q What is the date of that letter that you have before us?

A November 13, 1975.

Q Had the City undertaken at that time, Mr. Stainton, to examine the necessity of commencing a lawsuit in this matter?

A Yes. It was just at that time that we began to investigate that possibility.

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

Q Mr. Stainton, have you seen the assessment in this matter; have you read it?

A Yes, I have read the assessment.

Q Mr. Stainton, in connection with this assessment, do you recall now whether there was any discussion in this assessment concerning the effect on the downtown area?

A There was no discussion.

Q Was there any discussion concerning the effect on employment in the City of Rochester as a result of the moving of this facility?

A No.

Q Was there a discussion concerning employment available for residents in the Town of Henrietta in the assessment, if you can recall?

A No.

MR. DIGNAN: May I take one moment, Your Honor, please?

(Pause in the proceedings.)

MR. HOULIHAN: Your Honor, it would save me substantial time in cross examining Mr. Stainton if I had an opportunity to examine his files. I understand that his files are not here, and I wonder--

* * * * *

respect to transportation --

THE COURT: He doesn't have to recall it. He has got it right in front of him.

Q I show you Page 2.7 of the assessment. Can you read the last paragraph on that page, over into the top paragraph on Page 2.8 to yourself, please?

A (Witness complies.)

Q What does that pertain to in respect to that paragraph that you have just read on Page 2.7?

A Automobile transportation and public transportation and the availability of public transportation to the particular location.

Q The location in Henrietta, is that correct?

A Yes.

Q What does it say about the availability of public transportation in the particular area?

A It indicates limited public transportation is available. It says, "The Regional Transit Service offers two services between Henrietta and downtown Rochester."

And it discusses, "This circuitous road provides localized but infrequent bus service to the residents, and connects transfer points for service into Rochester."

Q Was there any assessment done in that document before you, Mr. Stainton, concerning transportation available in the City of Rochester in and around the present Post Office site?

A No.

Q I show you Page 5.1 of the assessment, Mr. Stainton, and refer you to the top paragraph. Would you tell us what that says, please, sir?

A It says, "Alternative locations for the proposed project were not within the realm of this study. The project site is the only one known, and therefore, evaluated."

Q I refer you to Page 2.5 of the assessment, Mr. Stainton, and ask you to read the last sentence on that page?

A (Reading): "The fact that Henrietta has no town center or village indicates that it views Rochester as its cultural and economic hub."

Q Is there any discussion in there concerning Rochester as the center of the metropolitan district or the metropolitan region other than that statement, Mr. Stainton?

A No.

Q To this date, Mr. Stainton, have you received any of the information you requested back on March 20th, 1974, pertaining to the employees employed at the United States

Postal Service on Cumberland Street in the City of Rochester?

A No.

Q To this date, Mr. Stainton, have you received any information pertaining to any sites studied that the Postal Service undertook and informed you about in March, 1974?

A No.

Q Mr. Stainton, have you apprised yourself of what it would cost the City of Rochester in terms of dollars spent by Postal Service employees if the Postal facility is to be transferred to Henrietta?

(Last question read.)

THE COURT: That is putting the cart before the horse.

MR. HOULIHAN: Why aren't they joined in the action is totally irrelevant to this issue on environment.

THE COURT: If he has done something factually to ascertain that, I would like to know the basis of it.

MR. DIGNAN: I will withdraw the question and restate it.

Q Mr. Stainton, have you made a determination with respect

* * * * *

who made the estimate.

MR. DIGNAN: But I would offer this just as an offer of proof that the amount would be --

THE COURT: When you get that in, you've got it in evidence.

MR. DIGNAN: Your Honor, I withdraw the question. If we can, we will produce Mr. Stockton after this witness.

DIRECT EXAMINATION CONTINUED

BY MR. DIGNAN:

Q Mr. Stainton, in connection with your position as Commissioner of the Department of Community Development and based upon your experience as a consultant and as a planner, can you describe for us what the effect will be on the physical environment in the City of Rochester if this facility is moved?

A There will be two effects. There will be the immediate effect in terms of the building itself, and presently, it is well-maintained. It is lighted at night and it, of course, is occupied twenty-four hours a day. When it is abandoned, it will begin to deteriorate.

THE COURT: You mean if it is

abandoned.

A If it is abandoned, it will deteriorate and become a major blighting influence in that area. That blighting influence will also, in terms of its physical condition and moving out the activities of that area, will also affect the surrounding area. There is ample evidence around the country that such abandoned buildings, unused buildings, have such an effect.

Q Mr. Stainton, can you tell us whether or not the abandonment and transfer of these facilities will eliminate continuing --

THE COURT: "Abandonment" and "transfer" are not the same thing.

Q Mr. Stainton, what is your understanding of the Postal Service's intentions as of November 13, 1975, with respect to the maintenance of these facilities in the downtown area located on Cumberland Street?

A Based on the information from the Post Office, they intend not to continue the operation of the facility.

Q Mr. Stainton, if they do not continue the operation of the facility as they have announced to you in November, 1975, can you tell us what that effect will be on continuing accessible employment for people in the vicinity of

the United States Post Office, in your opinion?

A There is no question that people of low and moderate income are much better served by employment opportunities that are located close to where they live. I would say they would be adversely affected.

Q Mr. Stainton, can you tell us who will have to deal with any safety or other problems that may arise as a result of the announced intention of the Post Office on November 13, 1975, who will have to deal with those problems if the building is vacated and those matters that you previously testified result?

A The City of Rochester.

Q Mr. Stainton, can you tell us, based upon your knowledge of the Post Office's announced intention on November 13, 1975, to abandon these facilities, what effect will this have on the business community in the vicinity of the present site of the United States Post Office?

A It could have nothing but a negative impact on that immediate area.

MR. DIGNAN: Your Honor, at this time I would like to move into evidence Plaintiffs' Exhibits 44, 45 --

THE COURT: One at a time because

* * * * *

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Direct by Mr. Dignan.

DIRECT EXAMINATION CONTINUED

BY MR. DIGNAN:

Q Mr. Stainton, I show you Page 3.2 of the assessment, which is Plaintiffs' Exhibit No. 4 marked in evidence and ask you if you will read the last paragraph on that page to yourself, sir.

A (Witness complies.)

Q Have you read that to yourself?

A Yes.

Q Can you tell me, does that statement say anything with respect to the amount of land that is going to be occupied by the building and the parking facility in Henrietta?

A Yes, it does.

Q What is the percentage of land use that is going to be used, according to that assessment?

A Land for building and parking will cover 23.2 acres or approximately forty-four per cent of the site.

Q Forty-four per cent of the forty-four acre site purchased, is that correct?

A Yes.

Q Could you tell me, Mr. Stainton, in your opinion, was there sufficient land proposed by you in March of 1974 concerning the amount of acreage that is being intended

to be used in Henrietta?

A Yes.

Q And would that acreage be approximately how many acres, sir?

A Twenty-five to thirty acres.

MR. DIGNAN: Would you mark this for identification?

(Plaintiffs' Exhibit 51 marked for identification.)

Q Mr. Stainton, I show you Exhibit P-51 marked for identification. Can you tell me what that is, sir?

A It is a letter to Mr. Isaacs from Mayor Ryan.

Q And what is the date on it?

A June 19, 1974.

Q Is that letter concerned with the rejection of the City's offer of a fifteen-acre site?

A That's correct.

MR. DIGNAN: I offer that in evidence, Your Honor.

MR. HOULIHAN: I have no objection.

THE COURT: Received.

(Plaintiffs' Exhibit 51 marked in evidence.)

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

MR. DIGNAN: I have no further questions at this time, Your Honor.

THE COURT: We will take a recess.

(Recess from 11:15 A.M. to 11:30 A.M.)

CROSS EXAMINATION

BY MR. HOULIHAN:

Q Mr. Stainton, you testified that the total building would cover twenty-three acres and that you proposed those sites that would house this facility?

A I would like to correct that statement. I indicated that the record showed that 8.9 acres would be covered by the building, and the rest would be covered by parking and related improvements.

Q Fifty-four per cent of the site would be developed?

A That's correct.

Q And you said that could be handled in the downtown area?

A That's correct.

Q As of 1973 and 1974?

A That's correct.

Q You are a planner, is that right?

A That's correct.

Q And you are aware of environmental impacts, zoning requirements, and such?

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A Yes.

Q I show you Page 3.3 of the report, which shows the site outlined with the dotted line?

A Yes.

Q And some dark spaces shows the coverage of building and parking. Does that substantially take up most of the area of that property?

A I have not measured the site. It would appear from the drawing that it does.

Q Isn't it a fact that when any site development that you necessarily have to have certain setbacks, that there is a requirement that there ought to be certain green spaces?

A It would depend on the area and the nature of the facility and whether or not a waiver to those setbacks could be obtained.

Q Would you say that it is good planning to build a building on the very edge of the property all the way around?

A It would depend entirely on the location. If it was adjacent to an expressway, for example, adjacent to the property line of the expressway, it would not be a mistake, or it might not be a mistake.

Q It might not be a mistake?

A That is a matter of individual site design, yes.

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

Q How about in this particular area, the forty-three acre site out here? Would you say that that ought to be built right on the edge of the property?

A In that location it would undoubtedly be troublesome, because of the surrounding areas.

Q Isn't it a fact that good planning, good development of property requires that there be a good amount of green around a building to prevent the effect of having a factory next to residential, next to other types of uses?

A It depends entirely on the location. If you go to the corner of State and Main, you will find a new building, the Security Trust Building, which is built on the property line.

Q Sir, we are talking about the facility in Henrietta. What would your opinion be with regard to the facility in Henrietta?

A It is true that if you were building a building in Henrietta that you would need a larger site than if you were building it in a built-up urban area.

Q Isn't it good practice in developing property that you have a buffer between a factory use and other uses that are less objectionable?

A That is generally the case, and I would say it would

certainly be the case in Henrietta, which would require a larger site in Henrietta than in a downtown urban built-up area.

Q Isn't it a fact that the property here shows that there are detention basins that are required in order to occupy part of the property?

A That is true. I believe if you built it in Rochester where there were storm sewers, you would not require detention basins. A detention basin is to handle storm water run-off when there is not adequate storm sewers available.

Q You also believed that a thirty-six acre site, a minimum thirty-six acre site, can be built on fifteen acres, is that right?

A If you will look at that drawing, you will see that perhaps nearly one-half of it is covered by surface parking. Surface parking is one solution to a parking situation. I'm not an expert on the layout of Postal facilities, but I do think I know something about parking layouts.

Q Do you know what the requirements might be of a Post Office with regard to parking, with regard to truck egress and entrance onto a property, with regard to turnaround? Are you familiar with that?

A I am generally familiar with the requirements of truck turnaround operations and the requirements for employee parking, which is undoubtedly greatly increased by this location.

Q I beg your pardon?

A Parking requirements are undoubtedly much higher on this location than they would be in a central location.

Q There isn't any free parking at all around the old Post Office, is there?

A I don't know whether the Post Office leases any land for its employees or not, which may be free to the employees.

Q Do you know anything about processing mail?

A The only thing I know is what I have been told by the Postal Service, which indicated the only solution they had was a one-story facility in order to provide an efficient operation.

Q On a site of what size?

A The building site as indicated for this facility is 8.9 acres.

Q And on a site of what size were you told in March of 1974, two years ago, that they needed?

A They indicated they needed a site of thirty-six acres, which included substantial area for employee parking as

indicated on the plan.

Q And also they indicated to you at that time, did they not, that they needed room for expansion of facilities, that they don't build buildings for today, that they build them for many years? Did they tell you that at that time?

A I don't recall if they did.

Q And were you aware at that time that the City did not offer any sites in excess of fifteen acres? As a matter of fact, a letter that came out from the Mayor of the City of Rochester, that is in evidence here, offered a fifteen-acre site?

A Sir, could I see the alternative sites that we presented at the meeting?

MR. DIONNE: I believe it is Exhibit 41.

MR. HOULIHAN: Let's try Exhibit 43 first.

Q We have a letter here from the Mayor of the City of Rochester offering a fifteen-acre site, is that right?

A Yes.

Q The Mayor was aware of this meeting, was aware of the project?

A Yes.

Q He was aware of the property in the City?

A Yes.

Q And he offered a fifteen-acre site?

A Yes.

Q And this is in total disregard of the basic requirements that the Postal people said, "We need thirty-six acres," isn't that correct?

A The thirty-six acres was for a specific program including surface parking on a one-story building and related improvements.

Q Mr. Stainton, you are a planner, aren't you?

A Yes.

Q When you build buildings, do you build them for today, or do you build them so they will be able to use those buildings for twenty, thirty, forty years?

A I think you will find that most buildings are built in conformance with a program which adapts to the site, and that program will be different for different locations.

Q But you did not answer my question. Is it good planning when people build buildings, do they build them for today, or do they build them so they accommodate their needs for ten, twenty, thirty years ahead?

A Obviously, you look ahead as clearly as you can at the

time you built it, and you plan ahead. I assume that the Post Office in planning this new facility is planning with some additional space within the building already.

Q Obviously, and these sites that you have proposed in Plaintiffs' Exhibit 41, you have got one of 9.1 acres and one of 9.7 acres, one of 14 acres and four of 30 acres. Does any one of those meet the minimum requirements told to you by the City or by the Postal Service of thirty-five acres, the minimum requirement?

A You are making a point of thirty-five acres, and as I have said before and will repeat, the program is flexible in that those funds could be accommodated on a smaller site, if the Post Office was interested in negotiating such a site with us.

Q Mr. Stainton, let me straighten something out first. Who knows more about Postal Service operations and requirements, you or the Postal Service?

A I think that is very clear, and you know the answer, which is the Postal Service.

Q Please tell me the answer. Who knows?

A My point is --

Q Who knows, please?

MR. DIGNAN: Your Honor, he is

trying to answer the question.

THE COURT: This is a waste of time.

MR. DIGNAN: It is argumentative, Your Honor.

THE COURT: Of course, it is. Manifestly, the question answers itself.

Q And you acknowledge that, I presume, and in view of that, the Postal Service would best know what its needs are, is that right?

THE COURT: That is the same question almost exactly.

Q Right, and if they told you they needed thirty-five acres, wouldn't that be a pretty good bet that they needed thiry-five acres?

A I don't accept that because of the reasons previously stated.

Q Because you think they would build it on a smaller scale?

A They are not only building a building. They are building parking areas, and they are building detention basins and landscaping and other things for that particular site.

Q So it is a question, really, that you think your opinion of building of what they should have is better than their

opinion of what they should have, is that right?

MR. DIGNAN: Your Honor, I've got to object to that. This is getting argumentative.

THE COURT: I will sustain the objection.

Q Mr. Stainton, is it fair to say that you think you know a better way to build a site for a Postal Service facility to handle the mail for the Rochester metropolitan area than the United States Postal Service?

MR. DIGNAN: Your Honor, that is the same question.

THE COURT: It sounds to me like the same question.

MR. HOULIHAN: It is not argumentative at all. I am just asking --

MR. DIGNAN: It is the same question.

THE COURT: You are asking him exactly the same thing he conceded a little while ago.

MR. HOULIHAN: If he will concede it, I will pass on to a different issue.

MR. DIGNAN: Let the record speak as to that.

MR. HOULIHAN: The answer need be "yes" or "no."

Would you read back the question?

MR. DIGNAN: Your Honor, I objected to the question.

THE COURT: I sustain the objection. Let's proceed.

Q Mr. Stainton, is it your opinion that the Postal Service can build a facility that they need for the next ten to twenty years on the site that they are at?

A On the present site of approximately three acres?

Q On the present site.

A The answer is no.

Q Do you feel that as of 1973 and 1974 that they could have built a facility that they needed for the next ten to twenty years on the area that is immediately adjacent to that facility?

A I maintain that if the Post Office had been prepared to enter into serious negotiations with the City, that we could have provided the site at that location that would have met their needs.

Q Of thirty-five acres?

THE COURT: You could have provided what, a site at that location?

A Within that area that would have provided for their needs.

Q I'm not talking about "within that area." I'm talking about on that site in the neighboring property.

A Yes.

Q And it would not include condemnation or anything else? It would be cleared property in that area?

A I didn't say that.

Q So, then, there would also have to be a condemnation on the part of the City of property all around there?

A As I've indicated in my previous testimony, the City owns parking areas. They recently acquired --

Q They recently acquired --

MR. DIGNAN: Would you let him finish the answer, please?

MR. HOULIHAN: Wait just a second.

MR. DIGNAN: I object. Mr. Stainton was in the midst of an answer.

THE COURT: I know he was attempting to tell about property recently acquired. That means to me after 1973?

MR. HOULIHAN: That's right. That is principally my objection, that what they did after 1973 is totally irrelevant.

THE WITNESS: We have indicated in the sites that were discussed with the Post Office at our meeting of March 15th that there were a number of areas that we felt --

MR. HOULIHAN: I guess I would like to withdraw that question --

MR. DIGNAN: Your Honor, again, he is interrupting the answer.

MR. HOULIHAN: I would like to withdraw that question and ask you this particular question.

In the area of the Post Office where it exists now, in 1973 when this was under consideration, was there sufficient acreage of cleared land that could accommodate the facility that the Post Office needed?

A I would say no.

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

Q Now what you are suggesting is that they could have built a facility in another part of the City, is that right?

A I am suggesting, using this building as an example, that through the process of public acquisition of land --

THE COURT: When you say "this building," you mean the building we are occupying at trial at the moment?

A That's correct, Your Honor. That building was planned as part of an urban renewal project, and when the City began that planning, there were other buildings on the site, and it was not owned by the City of Rochester.

Q At the time that the Post Office was considering building a facility in 1973, was it your suggestion that they could relocate in other parts of the City on land that you could provide to them?

A We listed for discussion purposes and with the hopes of entering into constructive negotiations seven alternative sites that appeared to have some merit to the City in which we hoped that the Post Office would consider seriously.

Q Are any of those sites the site where the Post Office exists?

THE COURT: It was not in the area

of the present Post Office.

You have already said it wasn't?

THE WITNESS: No.

MR. DIGNAN: No, Your Honor. I think the question was: "Was there sufficient cleared land?"

MR. HOULIHAN: No, it was not.

MR. DIGNAN: Mr. Houlihan, may I finish that?

Your Honor, I beg the Court's indulgence, but he asked the question: "Was there sufficient cleared land?"

Now Mr. Stainton is referring to an Exhibit which shows the seven sites that were offered.

THE COURT: I will ask you in particular: The sites that you proposed, were they in the area of the present Post Office?

THE WITNESS: The first of the seven sites specifically related to the area of the Post Office.

THE COURT: Not "related to it."

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Where was it?

A It included the site of the present Post Office.

THE COURT: What?

A The first of the seven sites included the site of the present Post Office. In other words, it would allow for the expansion and development in that area. That does not mean we had a completely worked out plan or not. We owned the entire site.

Q So you are saying that the Post Office, even though the buildings were owned by other people, could have expanded any place they wanted to, because they could condemn all the property around it. Doesn't condemnation have a blighting effect?

MR. DIGNAN: Your Honor, that is two questions running into each other. I would ask that he separate the questions and ask them in a correct manner.

MR. HOULIHAN: Absolutely.

Q Mr. Stainton, what you are suggesting in the first suggestion in that Potential Sites for New Post Office was extensive condemnation, is that right?

A There would be condemnation required, yes.

Q There were many structures already built in that area?

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

A Let me make a correction. We negotiate for property acquisition. Condemnation is frequently required in such situations.

Q Why would that be? Why would you have to condemn?

A Condemnation is frequently required in central locations because the business properties are unwilling to sell at the appraised value that is placed on the property.

Q And they don't want to leave the area, right?

A No. It has much more to do with what they feel they can get in a court of law through condemnation proceedings.

Q At the time that the Post Office was looking for property in the City of Rochester, was there a cleared parcel of property sufficient in size to accommodate Postal Service facilities that would not require acquisition by some other party or by condemnation in the area of the Post Office?

A The site that is referred to in the Mayor's letter, which was in the vicinity of fifteen acres, was directly to the north in the Upper Falls Urban Renewal Project Area. It was cleared, or largely cleared.

Q The fifteen-acre site, is that what you are talking about now?

A It was completely owned by the Urban Renewal Agency, yes.

Q Is this the fifteen-acre site?

A Yes.

Q This is somewhat twenty acres less than the Postal Service said its minimum requirement was?

A This was one of several alternatives.

Q Are we satisfied that there was not enough cleared land owned by the City in the vicinity of the Postal facility where it exists now, the Postal Service to build its required facility?

MR. DIGNAN: Your Honor, he said, "Are we satisfied." I think it is argumentative, Your Honor. The question should be asked and the answer as to what the facts are and not as to whether "we are satisfied." I object to the question.

MR. HOULIHAN: Your Honor, I withdraw the word "satisfied."

THE COURT: Don't keep any of the question. Formulate the question again.

Q Is it a fact that at the time the Postal Service was looking for property in the City that the City did not own a parcel of property big enough around the Rochester Post Office area and adjacent to it to accommodate the

needs of the Post Office?

A That is correct. It is also correct, as I understand --

Q If it is correct, please let me just go on with my examination.

A That's correct. There wasn't enough land. There was not sufficient land, yes.

Q That would require, then, that a building on any of your alternate sites would be away from that particular building, is that correct?

A That's correct, yes.

Q Assuming the same facts that we have in this case, assuming the Post Office relocated in a different part of the City, wouldn't that necessarily cause, according to your theory, the abandonment of the Rochester facility where it presently exists?

A That's correct.

Q And wouldn't that have the same blighting effect that you are suggesting might result if the Post Office were to abandon the facility?

A No, it wouldn't, because we pointed out three characteristics, three points here. The second is employment and jobs and the blighting effect of reduced employment opportunity would have --

Q Are you a planner --

MR. DIGNAN: Your Honor, he didn't let him finish his answer to the question.

MR. HOULIHAN: He answered the question.

MR. DIGNAN: He has not, Mr. Houlihan.

THE COURT: Let him finish the answer.

THE WITNESS: The second point I would like to make is the impact that it has on supportive activities. For instance, the Post Office could --

MR. HOULIHAN: May I withdraw the question so I don't have to have this answer?

THE COURT: All right. It is withdrawn.

MR. HOULIHAN: Thank you, Your Honor.

Q Mr. Stainton, "blighting effect on the area." That is all I am asking you about. Do you understand that?

THE COURT: Now don't explain the

question. Ask him the question.

Q If you abandoned the building to move to another place in the City, or you abandoned the building to move to Henrietta, wouldn't that have the same blighting effect on that area?

A No.

Q Are you now referring to employment?

A I'm referring to the blighting effect on the area and not specifically the site itself.

Q A psychological effect you mean, or what?

A I'm speaking of the concerns over employment and the supportive services that are provided both to employees and to the supporting services. For example, the Post Office could choose to provide maintenance services for its vehicles under contract. I would suggest that it is much more likely that if they are in Henrietta that those supporting facilities or services would be provided through other private means in Henrietta rather than in Rochester. In the same way, retail sales tend to be related in part to where people work, and if you pull fourteen hundred jobs out of downtown Rochester, you will have --

MR. HOULIHAN: Mr. Stainton, you are trying to get in that evidence that Judge Burke has already ruled on.

I object, Your Honor.

THE WITNESS: You asked if it would have a blighting impact. That was the nature of my response.

Q Isn't it a fact that the concern of the City of Rochester was primarily that they did not have a parcel of thirty-five acres in the City that could be offered to the Post Office?

MR. DIGNAN: Objection, Your Honor. I don't understand the question. I really don't.

THE COURT: Objection is overruled.

THE WITNESS: Would you restate the question, please?

Q Wasn't one of the main considerations that the City of Rochester had was that they did not have a parcel of property of thirty-five acres in size to offer to the Post Office?

A We indicated in the report that we prepared that we had seven sites, or would be prepared to consider seven sites, some of which were thirty acres. The answer is yes.

Q The answer is --

A -- prior concern.

Q Listen. I want you to understand that Exhibit 41 is in evidence and we all are aware of every single site that you set forth to the Post Office.

A Yes.

Q Wasn't the other consideration that the City had was that they didn't want to have thirty-five acres of land in the City tax-exempt?

A That was one of the other considerations.

Q Now during the course of your concern over the Postal move, you knew about it in January of 1974 that they were thinking about locating south of the City, is that correct?

A That's correct.

Q How did you find that out?

A From the newspaper.

Q Were you aware in July of 1974 that they had purchased forty-three acres of land in the Town of Henrietta?

A No.

Q Mr. Stainton, when did you first become aware that the Post Office had purchased the property out in Henrietta?

A We were never formally notified.

Q When did you first learn of that?

A I don't know that I was --

THE COURT: Did you ever learn of it?

A I assume they owned it.

THE COURT: Not what you assumed -- did you ever learn that they had purchased property in Henrietta?

A No.

Q You never knew about it?

THE COURT: Don't you know it now?

A Of course.

THE COURT: That is what I asked you.

A August of 1975.

Q That was the first time you heard about it?

A That was the first time I was sure that they owned the site.

THE COURT: I'm not asking you whether you were sure about it. You would never be sure about it unless you went over the deed on the record. That isn't what I am talking about.

Did you ever get any information that they had acquired the land through newspaper articles, telephone calls, letters, anything of that sort?

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A No, sir.

Q The first time you knew about it was in August of 1975, from newspapers, television, any place at all?

A This series of correspondence indicates that we knew, and we knew at the time of the meeting on March 19, 1974, that it was the intention of the Post Office to proceed with the preferred location in Henrietta.

THE COURT: That is not what we are talking about. We are talking about the acquiring of land.

THE WITNESS: The actual purchase I don't recall being specifically knowledgeable about it before --

THE COURT: I don't know what you mean by "specifically knowledgeable," but I would say if there was an article in the newspaper, that would be specific knowledge, if you read it.

THE WITNESS: Yes, sir.

MR. HOULIHAN: Would you mark these for identification?

(Defendants' Exhibits 2 through 16 marked for identification.)

* * * * *

MR. DIGNAN: Your Honor, I would like to also object to the reading of that because it says, "Henrietta Post Office Site Picked?" It is not a "period."

THE COURT: I'm sure I will discover that before the case is over.

Q Were you aware of that article?

THE COURT: Offer it in evidence and read it and then I will know exactly what it is.

MR. HOULIHAN: I offer Defendants' Exhibit 16, Your Honor.

THE COURT: Let me see it first.

(Defendants' Exhibit 16 handed to the Court.)

MR. HOULIHAN: That is preliminary to the next ones, Your Honor.

THE COURT: Do away with the preliminaries and get down to the punch line. When did they buy the property?

MR. HOULIHAN: D-12 and D-13 goes along with that one.

(Defendants' Exhibit 16 marked in evidence.)

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

THE COURT: Without asking me to read all of those paragraphs, will you point out where it says that they bought property?

MR. HOULIHAN: That paragraph right there (indicating).

THE COURT: I still don't see where, particularly. If it says they bought property, that is where I want to read.

MR. HOULIHAN: Your Honor, I'm going to have to sort this out. I will proceed with another question.

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Did you know from your reading of the newspaper that the Post Office had acquired property in Henrietta?

THE COURT: That is exactly the question. You were looking for the document to support it, and apparently, you can't find it, and now you are asking him about it.

MR. HOULIHAN: There are loads of

documents that are talking about --

THE COURT: I don't care if there are "lands." I'm only looking for one. That is an announcement that they purchased property. If you can't point to it, I don't know how you can expect him to be able to find it.

MR. HOULIHAN: We do not have a newspaper article that says specifically the Post Office purchased this property. The newspaper articles that we have talk about it having been purchased and having been developed.

THE COURT: That is exactly the question you asked him.

MR. HOULIHAN: Right.

THE COURT: When did he know that they had purchased the property? Then we got to the question of how he could know that.

MR. HOULIHAN: That's right.

THE COURT: And we settled upon the most likely way would be a newspaper

article.

MR. HOULIHAN: That's right.

THE COURT: Now apparently you can't find it?

MR. HOULIHAN: That's right.

THE COURT: All right.

Q Did you learn about the fact that a site had been proposed by any other means by the newspaper articles that referred to the Town of Henrietta fighting the proposed location of the facility in Rochester, or from newspaper articles suggesting that the Post Office downtown be preserved, restored and not moved to Henrietta?

A I would like to clarify a previous point that I made. I don't know that they own it today, the site that they are building on.

THE COURT: You don't know what?

A I don't know that they own it today.

THE COURT: What do you mean by that? You mean you have never seen the deed?

A No, I have never seen the deed. I don't recall a specific announcement on it.

THE COURT: Is that the only way

you can find out whether they purchased it is by looking at the deed?

A No. I would assume if I had seen it in the paper that I would understand that it was purchased.

Q Were you aware prior to August of 1975 that the Postal Service intended to build a facility outside of the City of Rochester?

A Yes.

Q When?

A They clearly indicated at our meeting on March 15th that because of the site constraints in the City of Rochester and their site studies, that they intended to locate to the south in Henrietta without being specific as to the exact location of the site.

Q So you knew two years ago that they were going to move out of the City of Rochester and into Henrietta?

MR. DIGNAN: It was asked and answered already, Your Honor.

THE COURT: Objection is overruled. It is the same question, but maybe it is better the second time.

Q Is the answer "yes"?

A They indicated that in coming to Rochester to meet with

the Manager, they had indicated that they had not made a final choice of the site at that time.

THE COURT: They said they intended to?

A They intended to, yes.

THE COURT: That doesn't mean when they say that they intended to do it that they selected a final site?

A That's right.

Q During the course of the year 1974, did it become increasingly apparent to you and the City officials that the U. S. Postal Service was intending to move and build a site, a facility in Henrietta?

A The exact location in terms of the town, I would not pin myself down to that date.

Q But you were aware that this was settled, that it was going in Henrietta?

MR. DIGNAN: The question has been asked and answered, Your Honor.

THE COURT: What time?

Q In 1974?

A Yes.

Q As a matter of fact, Plaintiffs' Exhibit 44, which is a

letter to William Finn from Nathan Robfogel, which was introduced as part of your file and says, "We assume that the relocation is a matter of fait accompli," and meaning that it is already done, is that right?

MR. DIGNAN: I'm going to object. The letter speaks for itself. Mr. Stainton didn't write the letter.

THE COURT: Unless it speaks loud enough, I will never know what is in it.

MR. DIGNAN: The letter is from Mr. Robfogel to Mr. Finn.

THE COURT: Is it in evidence?

MR. DIGNAN: Yes, Your Honor.

THE COURT: Then anybody can read it. You can read it; he can; or the witness can. There certainly can be no objection to him reading a letter that is in evidence, and I understand that is what your objection was to somebody reading it?

MR. DIGNAN: My objection was not to that. It was to Mr. Houlihan's description of what was in the letter.

THE COURT: That has been done

many times in the case, including you, to save time in reading the whole document, to have the witness tell what it was.

MR. DIGNAN: The witness, yes, sir, but not counsel.

THE WITNESS: It says: "Therefore, I am sure that you will understand my concern when I note news stories in the local newspapers which could easily lead one to assume that the relocation is a matter of fait accompli."

Q So since you received a copy of this letter, you knew at least at that time that it was pretty much over, and this was in July of 1974, is that right?

A I will continue with the letter. (Reading): "It is my understanding that there are compelling arguments which can be made to justify expansion of your facilities at the present site in such a way as to meet the up-to-date needs of the Postal Service. In my judgment, any relocation should be seriously considered until all of the ramifications have been studied. These relate not only to speedy mail delivery, but also the impact on neighborhoods near the present Main Post Office, business and

industry, and the impact any such relocation would have on the long-range concept of the City of Rochester continuing as the hub of the Genesee-Finger Lakes Region."

It is clear from the letter that Mr. Robfogel did not accept a relocation of the Post Office as "fait accompli."

Q My question was not whether --

THE COURT: You are telling me what the letter means. I will read the letter, and I will determine what it means.

Q My point is, Mr. Stainton, so we don't have to get into exact dates, isn't it a fact that you could have brought an action against the United States Postal Service well over two years ago to stop this?

MR. DIGNAN: Your Honor, I object.

THE COURT: He could have brought it five years ago if he wanted to.

MR. DIGNAN: I object to the question, Your Honor.

MR. HOULIHAN: No, he couldn't.

THE COURT: You say they could not have brought it. All you have got to do is have fifteen dollars and file a paper

and the action is started.

Q Did you have sufficient facts that they were going to move to Henrietta prior to January, 1975?

A That is a legal question. I don't care to answer it.

Q Mr. Stainton, did you work at all with the Genesee-Finger Lakes Regional Planning Board?

A With?

Q With.

A Directly, no.

Q You never talked with them about what their jobs were and what your jobs were within the efforts coordinated --

A That wasn't the question. You said, did I work directly with them.

Q Yes.

A I worked many times with the Director and the staff on various matters of mutual concern, yes.

Q Did it ever come up in any of these working sessions about the Postal move to Henrietta?

A I had some verbal discussions with the Director at that time regarding the move, yes.

Q In what year were those?

A I didn't discuss it with him directly until 1975.

Q Did you discuss the Postal move with any member of the

Genesee-Finger Lakes Regional Planning Board in 1974?

A Mr. Chiarella, who is a member of the Regional Planning Board, I had a discussion with him, yes.

Q And as a matter of fact, you had extensive discussions with Mr. Chiarella on this move, is that right?

MR. DIGNAN: I'm going to object. He didn't say "extensive."

THE COURT: Objection is overruled.

A I did not have extensive conversations. Most of it was done by correspondence or copies of coorespondence.

Q Were you here during the testimony yesterday of Miss Ely?

A Yes.

Q And Mr. Brown?

A Yes.

Q They work for the Genesee-Finger Lakes Regional Planning Board, is that correct?

A Yes.

Q Did you work with them at all in connection with the Henrietta facility for the United States Postal Service?

A I did not, no.

Q Never?

A No.

Q But you did with other members of the Genesee-Finger Lakes

Regional Planning Board?

A Yes.

Q Principally, Mr. Denslow and Mr. Chiarella, back in 1974?

A Yes. I want it understood, though, there is a difference between a staff member and a Board member.

Q You mean that if the Board member knows about the move that that doesn't mean that the Planning Board knows?

A I didn't say that, no.

Q What do you mean?

A I just wanted it understood the difference between the staff and Board. Mr. Chiarella is not an employee of the Genesee-Finger Lakes Regional Planning Board. He is a member of the Board.

Q Who manages the operations of the Genesee-Finger Lakes Regional Planning Board?

A It is headed by a Director and Executive Director, who reports to the Board.

Q To the Board?

A Yes. He is a member of the Board.

Q Do you work with the Genesee-Finger Lakes Regional Planning Board in the preparation of their Comprehensive Regional Development Plan, which is dated June, 1975, which is specifically in relation to the portion of that report

that concerns the City of Rochester?

A Yes. We briefed a number of concerns, and they transmitted the report formally to us for our review and comments, and we made that review and comment as it specifically related to the City.

Q And did one of those specific reviews and comments include the relocation of the Central Post Office to Henrietta?

A I don't remember.

Q Do you remember discussing anything with the members of the Genesee-Finger Lakes Regional Planning Board in 1974 other than Mr. Chiarella concerning the relocation of the Post Office to Henrietta?

A No.

Q You could have, but you don't remember, is that what you are saying?

A I could have, but I don't remember, yes.

Q Did you keep a newspaper file of the articles that appeared in connection with the Post Office?

A No.

Q Is there a newspaper file kept by your Planning Commission with regard to articles involving the City?

A The Planning Director may keep such files. I'm not aware of them. They are not in my files.

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

Q Are you aware of any other announcements, publications, addresses by the United States Postal Service prior to November 13, 1975, that indicated that they intended to maintain a customer service and delivery facility in the same building in downtown Rochester and to rent out the remainder of the space?

A There have been various reports in the newspaper, which I have read. I don't know, and it may be there are letters in the file that seem to conflict with their statements, that they will abandon the Post Office.

Q Is it a necessary effect that if one occupant moves out of the building, that it will definitely cause a blight on the area? Is that a necessary result of abandoning the facility?

A I don't understand what that question means.

MR. DIGNAN: I object to it.

Q You suggested in your direct testimony that if the Post Office were to vacate that building that it would cause a blight on the area. Is that necessarily so?

A It is what is the overwhelming evidence which shows the effect, yes.

Q Is that true only if the building is unoccupied?

A It depends whether the building is maintained or not.

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Q So that if the building is maintained, it would not have any blighting effect, is that right?

THE COURT: What do you mean by "maintained"? I suppose that might mean there is a watchman there.

Q What do you mean by "maintained"?

THE COURT: What do you mean? You are the one that said it.

MR. HOULIHAN: Absolutely not, Your Honor. I can have the question and answer read back. He is the one that said if the building is maintained, it wouldn't cause a blight.

Would you read that back.

(The following question and answer read: "Question: Is that true only if the building is unoccupied?

"Answer: It depends on whether the building is maintained or not.")

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q What do you mean by "maintained"?

A I will answer that question. Most buildings that are un-

occupied, such as the Edwards building on Main Street, which has a maintenance man, is a blighting influence. It is unoccupied except for a watchman.

I would like to repeat the earlier statement that I made, that the concern is not only for the building and the site itself but the surrounding area, and the vacant building without use has a blighting impact on the surrounding community. Those principles are well established in law.

Q In law?

A Urban renewal law.

Q What if the building were occupied? Would the same effect be true?

A The nature of an occupancy of a building is important in terms of the impact it has both on the building and the surrounding area.

Q Maybe you didn't understand my question. If the building were occupied, would the same thing be true? Would it have a blighting effect?

A Occupied by whom?

THE COURT: Suppose they put in a two-day sale there, it would be occupied.

Q How about a permanent occupant, the United States Postal

Service?

A As a blighting influence? Your question means if they continue the present nature of the facility and the use of the facility, is that a blighting influence.

MR. HOULIHAN: I will withdraw those questions.

THE COURT: I think I know what he means. You mean if it is occupied by somebody else other than the Post Office?

MR. HOULIHAN: Yes.

THE WITNESS: If it was used for warehousing, for instance.

Q What if it were used by the City of Rochester as City Hall?

A That would be a function that I would not think would be a blighting influence on that area.

Q As a matter of fact, a use as City Hall would have an admirable effect on the area, wouldn't it? It would encourage development around the whole area of the Post Office, is that right?

A That's correct.

Q Has the City ever thought about occupying this building for use as City Hall?

A The "City" meaning me?

Q The City of Rochester.

A Do you mean the City Council?

Q Whoever considered these questions -- have you ever thought of that?

A I don't think it has been thought of. I have not, and it has not been presented, to my knowledge, to count as a matter to be seriously considered.

THE COURT: We will recess until two o'clock.

(A luncheon recess was taken at 12:40 P.M.)

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Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

Rochester, New York

Friday, February 20, 1976

2:00 P.M.

- - -

J O H N S T A I N T O N,

called as a witness by the Plaintiffs, being previously duly sworn, testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Just prior to the recess, we were talking about the use of the Rochester Post Office as a possible site for City Hall. Since the announcement to relocate in Henrietta was in January of 1974, had the City made any steps to consider the use of that building as a possible City Hall?

A No, it hasn't. As you know, the City is presently preparing working drawings to use the existing old Federal Building --

THE COURT: We are not talking about that. We are talking about the old Post Office Building.

A No, it has not.

Q Have you made any efforts to try to find new people to occupy that building?

A No.

Q Would the use of that building as City Hall be a better use than using it as a mail factory?

A I have no idea.

Q Do you have an opinion on it?

A No.

Q Would the use of that building by a non-governmental agency be a better use, as far as the City is concerned?

A A better use than what?

Q A better use than the Postal facility as a mail facility?

A That is a hypothetical question and it would depend on the use.

Q What if Bausch & Lomb or Xerox Corporation or Lawyers Cooperative wanted to use that building as part of an office space?

A It is conceivable.

Q That would be a better use?

A It could be worked out as an appropriate use.

Q That would replace that property back on the City tax rolls, is that right?

A That would be a consideration, yes.

Q So is it fair to say that the abandonment of the facility would have an effect on the environment unless that

building fitted a better use?

A It would depend on the reuse of the building.

Q You are really speculating if the building is abandoned that no one will use it?

A All we know is that the Post Office has indicated in various communications that they planned to abandon the facility. It is often very difficult to find a reuse for buildings.

Q Isn't this a one of a kind facility?

A Do you mean because of its access to downtown and its relationship to the Central Business District wouldn't there be a lot of people interested in that?

Not necessarily. There are many other buildings in the community that are presently vacant that might be more adaptable for such an industrial use as you mentioned. There is extensive vacant office space downtown, and there are vacant industrial buildings, such as the old Bausch & Lomb building on St. Paul Street.

Q Isn't it a fact that this has better access than any of the locations that you have just mentioned in terms of the Inner Loop?

A I don't think it is significantly better, no.

Q You suggested in your previous testimony that the Post

Office should build its facility on that property. Wouldn't that necessitate tearing down the Rochester Post Office?

A I did not say the Post Office should build it on that location. I said they had not considered that as a possible alternative, at least in any material that we had, and they had never been in contact with us about it, about the possibility of renovating the facility or purchasing adjacent land, some of which are owned by the City of Rochester.

Q So you are not complaining that they didn't think about that? You are complaining that they didn't tell you about it. That is your complaint.

A I am indicating we had no contact with them as to that.

Q They didn't tell you that they considered that use?

A That's correct.

Q Was the fact that the Rochester Post Office intends to remain in the Postal facility in Rochester for the foreseeable future for customer service and delivery facilities, would that change your opinion with regard to this blight which you claim might result on a probable abandonment, if there are no new tenants in there?

A My understanding is, first of all, that they plan to

abandon the facility and not continue its use. The contrary information from the Post Office was that they might maintain some small facility and lease out the rest of the space. Obviously, a facility that continues in use is in a far better situation than one that has no use.

Q So, then, if it is a fact that the Post Office does intend to stay there, then the blighting effect that you testified to in your direct examination just wouldn't occur?

A I would like to come back to the previous statement that the blighting influence is conditioned on the reviews of the property and also the facility that we are concerned about and about the extensive number of employees in the area that do provide and relate to certain supporting activities in terms of services that are supplied, both to the Post Office and to the employees of the Post Office.

Q Have you contacted any Postal employees in connection with your study of the situation?

A No, I have not.

Q You haven't talked to any employees to determine what their position might be on the proposed move?

A No.

Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Cross by Mr. Houlihan.

Q Are you aware of any position that the Postal employees have?

A I believe I read a recent newspaper article by the head of the Union, and I don't recall the substance of it, but I do believe that it has some aspect as to their attitude.

Q Isn't it a fact that they were in favor of the move?

A I believe it referred to some of the problems of crime in the immediate area.

Q And it also referred to parking problems, did it not?

A The Post Office has never spoken with me about their parking problems or dealt with us in any way to try to resolve those.

Q So, again, you are saying that it is not a matter that they considered, but it is a matter that they didn't tell you about it?

A They have never been in contact with us about their parking problems or attempted to work them out with us.

Q Would you have any objection to the decision of the Post Office if you were convinced that there was a detailed study made of the existing facility in Rochester, and that as a result of that study, and taking in consideration the employee situation, safety, and that as a result of that study, that it was an inadequate facility, that

it could not be remodeled and that they must move out of the area?

A I have not seen a copy of it, and obviously, the level of detail, such as the studies done on the premises as it was based, would have to be examined before you could immediately judge as to the conclusion that the study might reach.

Q I am posing a hypothetical question to you: If they did do such a study, would you have any objection to their decision moving out of the Rochester area?

MR. DIGNAN: I object, Your Honor. It has been answered.

THE COURT: I will sustain the objection.

Q Mr. Stainton, did you attend a meeting at the Rochester Chamber of Commerce in the spring of 1974 where Postmaster William Finn discussed the proposed move?

A Yes, I did.

Q Was there a discussion at that time about the Postal requirements of thirty-five acres?

A Yes. There was a discussion, and I don't recall the specific acreage that was mentioned at the meeting.

Q Was there also a statement made at that meeting that the

Postal Service intended to retain a facility at that Rochester Post Office?

A I don't recall.

Q Do you recall who called that meeting?

A I believe it was a member of the Chamber of Commerce staff. I don't recall the exact name.

Q Mr. Lee, perhaps?

A Mr. Lee is a retailer in Rochester. I don't recall whether he called the meeting. I believe I received a call from the Chamber of Commerce staff.

MR. HOULIHAN: Would you mark this for identification?

(Defendants' Exhibit 17 marked for identification.)

Q Mr. Stainton, I show you Defendants' Exhibit 17 marked for identification. Do you know what that is?

A These are some notes that I had made at a meeting March 15th, in the Manager's office with Post Office officials.

Q And this is the one that you described in your direct testimony?

A That's correct.

Q And the second note on the sheet says, "Need for at least thirty-six acres." Is that in your handwriting?

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A Yes, it is.

Q And that indicates that the Post Office said that it needed thirty-six acres at that time, is that correct?

A That's correct, yes.

Q And the next note, what does that say?

A It says, "Because of the nature of the area, land not available."

Q And they suggested at that time, did they not, that they considered the General Dynamics plant that had been abandoned by General Dynamics in the City because the City School District had indicated their interest in that project, is that correct?

A Yes.

Q Did they also advise you at that time that the heavy flow of traffic on the City streets was undesirable?

A That is what the notes say, yes.

Q And they also told you that the new mail concept at that time was to have a large mail processing plant convenient to highways and planes, is that right?

A Yes.

Q Then they indicated that the City Assessor indicated there was twenty-one acres located near Mt. Read and Emerson, is that right?

A Apparently, they had a discussion. I don't recall the specific discussion at the time, but apparently, they had talked to the City Assessor, who had given them that information.

Q And they concluded that it was not suitable for their purposes, is that right?

A That is not what the note says.

Q And it says, "Site Selection Committee decided it was not the best."

A That would indicate that the Post Office had looked at that site and had rejected it.

Q Then you were aware, at least, at this meeting in March of 1974, that they looked at the General Dynamics plant and they looked at the Mt. Read and Emerson location in the City?

A Yes, sir.

Q And they went on to consider sites in Brighton and sites in Henrietta and sites in Gates, is that correct?

A Yes.

Q And then did the Post Office people at that time explain the extensive distribution and operation of the Postal facility requirements in the Rochester area?

A Yes.

Q And they told you the district boundaries, how far they went?

A Yes.

Q And they also described at that time that the facility that they required was based on a twenty-year usage, is that right, a building of 400,000 square feet?

A Let me read the entire statement. The note says:

"Facility: 1 floor -- site based on twenty-year growth. Building 400,000 square feet for building or ten acres, one third of the site."

Q They did describe what their needs were?

A Yes, as indicated in the notes.

Q Did they tell you at that time that as part of the site selection, the EEO has to sign off that there wouldn't be any employment problems as a result of it?

A Yes. As indicated in the notes, it says, "As part of site selection, EEO has to sign off."

Q So you did know at that time that they did consider employment, that it had to be a part of their consideration?

A That is not what the notes say. It says that "As part --

THE COURT: I'm not concerned much about what the notes say. I'm concerned about what happened at the meeting.

Now you can use the notes, but I want to know what happened at the meeting and not what is in your notes.

THE WITNESS: It was a meeting in which they tried to indicate that they had covered all of the things that they were legally required to do, including the EEO requirement.

Q And they did tell you all that, didn't they?

A They stated it verbally, yes.

Q Your objection, then, is that they didn't allow you to look at it?

A We have never seen any documentation, no.

Q Then your complaint is they didn't allow you to look at it?

A We asked for and we have not received any of the information.

Q Then your complaint is that you have not had the opportunity to read this stuff?

MR. DIGNAN: Your Honor, our complaint is in evidence. It is before the Court what we are intending --

THE COURT: Objection is overruled.

THE WITNESS: I would say that one

of our concerns has been the lack of co-operation and coordination with local government.

MR. HOULIHAN: I offer D-17.

MR. DIGNAN: Your Honor, may I voir dire on this for a minute?

THE COURT: What?

MR. DIGNAN: There are additional items in the notes, and I would like to have it put on the record the notes that weren't read by counsel.

MR. HOULIHAN: He has plenty of time to do it on rebuttal, Your Honor.

THE COURT: I don't understand what your point is.

MR. DIGNAN: There are other items in here that the government attorney did not bring to the attention of Mr. Stainton in the notes.

THE COURT: That doesn't make any difference. He is just offering the notes.

MR. DIGNAN: All right, with the understanding that I will have an oppor-

tunity on redirect to go over this with him again. I have no objection.

THE COURT: Received.

(Defendants' Exhibit 17 marked in evidence.)

MR. DIGMAN: Would you mark these for identification?

(Defendants' Exhibits 18, 19 and 20 marked for identification.)

Q Mr. Stainton, I show you Defendants' Exhibit 18 marked for identification, which is a letter signed by you dated March 12, 1974. Is that taken from your files?

A Is not not a letter. It is a memorandum to the City Manager from myself.

THE COURT: What is the difference between a letter and a memorandum? They are both typewritten, aren't they?

A Yes.

THE COURT: You mean one doesn't go through the mail?

Q Is that part of your files?

A Yes.

Q And you wrote that memorandum?

A Yes.

Q It says in this memorandum, does it not, that you reviewed the material which dated back to 1969 and indicates that the Post Office believed "that the City expressed a preference for the facility to be outside the inner core of the City." Is that accurate?

THE COURT: You don't have to ask him if it is accurate. All you've got to do is read it.

MR. HOULIHAN: May we move this in evidence?

MR. DIGNAN: I have no objection, Your Honor.

THE COURT: It is received in evidence.

(Defendants' Exhibit 18 marked in evidence.)

MR. HOULIHAN: It says in the second paragraph: "The attached material, which includes earlier correspondence dating back to 1969, is attached. The covering fact sheet indicates the Post Office's belief that the City expressed a

preference for the facility to be outside the inner core of the City. (Apparently, a number of sites were considered, including the General Dynamics plant.)

"There apparently has been little or no contact with City officials or staff since 1969.

"It is my understanding that Seymour Scher was not enthusiastic about a central location, primarily because it would cover so much land, and it did not generate any return in taxes. Congressman Horton's letters, on the other hand, indicate support for a central location.

"A number of points raised by the Post Office to Congressman Horton in 1969 regarding a central location dealt, in addition to the tax question. The Post Office concluded a central location would incur intense community opposition and that the proposed one-story type of facility would not justify a central location and would create heavy truck traffic.

"The above points are valid, and our position should be one basically of trying to understand what the issues and program requirements are."

Was that your feeling at that time that the Post Office had valid points in deciding not to locate in downtown Rochester?

MR. DIGNAN: Your Honor, I object, please. Mr. Houlihan was reading that letter and has now concluded it, sir.

THE COURT: You can read it right now.

MR. DIGNAN: Thank you, Your Honor.

(Reading): "Of particular concern is the potential impact on minority employees who may now or in the future be employed at the facility, as well as an understanding of the possible secondary employment benefits or services that would be supplied to the new Post Office."

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Is it true that you said that the points made by the

United States Postal Service are valid?

A Those points, of course, are valid for any site that this facility might go on.

Q But you are talking in particular of this letter about the City of Rochester and of the Central Post Office remaining in the City of Rochester, are you not?

A They are valid considerations. That was the question you asked.

Q They are valid considerations for not locating in the City of Rochester, is that right?

A That is not what the letter says.

Q What does the letter say?

THE COURT: You don't have to ask him what it says. You've got it right in front of you there.

MR. HOULIHAN: It appears to me that the --

THE COURT: There can't be any question. You read the same as he does, and if you both read honestly, you will both come out with the same result.

Q The above points are valid. The points raised by the Postal Service are valid. In addition you have mentioned

about your concern with employment. I'm not discussing that at this time. I'm talking about the points made by the Postal Service.

A They are all valid concerns, yes.

Q And it is a fact that the City Manager at that time, Seymour Scher, did not want the Post Office to locate in the City, isn't that right?

THE COURT: That is what is said in there, isn't it? I don't understand. Are you asking him what it says in the letter or memorandum?

MR. HOULIHAN: Well, yes, you are right. I was asking that. I withdraw the question.

Q Attached to D-18 in evidence is a letter to Congressman Horton from Jack Powell from the United States Postal Service, wherein the points that you agreed were valid in your covering memorandum were covered, and I will read the letter:

"The Postmaster General has asked me to reply further to your letter of August 25, 1969, concerning the proposed Major Facility planned for Rochester, New York.

"The Inner City site described in your letter is the

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site referred to as the Ormond-Leopold site by the City of Rochester, and is the site considered by the Department in making the ultimate site selection. Prior to the review of the available sites, departmental representatives conferred at length with the City officials to assure that the proposed facility would not conflict with the overall development plan desired by the City. In reviewing the proposed sites, the City was very much opposed to the Ormond-Leopold site being utilized for Postal purposes, setting forth six points as their basis for objection. These six points are as follows:

"1. In recent months there has been a great deal of time and effort, both public and private, spent in developing resident interest and improving physical conditions in this area.

"2. This neighborhood is in Rochester's Model Cities area. Any decision made regarding the re-use of land within the Model Cities area must involve the Model Neighborhood Council.

"3. Selection of this site for the Sectional Postal Facility would undercut neighborhood efforts to improve and increase the housing supply, and as such, would doubtlessly incur intense community reaction.

"4. During the last month the City has received two purchase requests for City-owned land in this area; one from Better Rochester Living, a non-profit corporation which constructs and rehabilitates housing for low-income families, and another request from a neighborhood church that wants land for new facilities. These requests indicate a continuing interest that the area remain in residential use.

"5. A Sectional Postal Facility cannot be considered the 'highest and best use' for this area. If an industrial use is to locate between the railroad and the Inner Loop, it should be an intensive use which takes advantage of the proximity to the Central Business District.

"6. As they are already over-utilized, the local streets surrounding the area cannot satisfactorily handle the truck traffic which would be generated by the Postal Facility."

Again, this is an additional site that the Postal Service considered in the City, isn't that correct, the Ormond-Leopold Street site?

MR. DIGNAN: Just for the record, can I have who that letter is from, the

date, and who it is addressed to?

MR. HOULIHAN: It is dated September 16, 1969, and it is from Jack Powell, and it is part of Defendants' Exhibit 13 in evidence.

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q That is an additional facility besides the Mt. Read location and the General Dynamics location that the City considered for improvement?

A Yes.

Q What date was it, Mr. Stainton, that you testified that you learned that the Post Office was going to abandon the facility in the City of Rochester?

A The Post Office in our meeting of March 15th, 1974, indicated that they did not appear at that point to have any further use of the present building and we spent some time discussing the disposition procedures that would take place.

Q And did they advise you at that time that even though their processing plant would be moved that there would be maintained in the building customer service and delivery service?

A No. They stated that they would maintain customer service, I believe what they call lock-box service, in the area. They did not speak of the specific facility.

Q Were you aware of newspaper articles throughout the period 1974 and 1975 that indicated that quotes from the officials of the United States Postal Service and the local Postmaster, Mr. Finn, that they would continue to maintain customer service and delivery functions out of that building?

A I was aware of a great deal of contradiction on the part of the Post Office as to what they would do.

Q Isn't it a fact that the only contradiction that you have offered in your testimony is the letter from Mr. Kenyon, that was dated November 13, 1975, isn't that right?

A I believe I just testified a moment ago that at our meeting of March 15, 1974, that they indicated that they would be abandoning the facility.

Q Didn't they indicate there would be a possibility that they would abandon the facility if it no longer served their needs?

A I don't recall it.

Q Mr. Stainton, I show you Defendants' Exhibit 19, which is a memorandum from your file indicating that in the letter to Congressman Horton, the Post Office had indicated their

intention to stay in the Rochester facility?

A Yes, I have seen that letter, dated October 15, 1975.

Q So at least up until that point you were aware that there have been no conflicting reports other than the possibility indicated in the March, 1974, meeting, that it might become surplus?

THE COURT: He didn't say there was a possibility in 1974.

MR. HOULIHAN: He said he wasn't sure.

THE COURT: No. He said he did not recall it. When you asked him if there was a possibility, he said he did not recall.

THE WITNESS: I do recall discussing the disposition procedures of the Post Office. The point seemed very strong at that time that they were not planning to maintain it, that they would maintain a lock-box and walk-in facility in the area.

Q At least in October of 1975, when you wrote that memorandum, the Post Office had indicated that it was going to maintain a reduced use in the existing building, is that

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correct?

MR. DIGNAN: Your Honor, may I please have what he is referring to, the description of the document.

MR. HOULIHAN: Are you referring to this (indicating)?

MR. DIGNAN: Your Honor, I would like the record to show what he is referring to. It is a four-page document.

MR. HOULIHAN: I appreciate the suggestion of counsel that I talk about all of these things, but I would like to talk about them in the order they appear.

THE COURT: You are holding a sheaf of papers in your hand, and not one document, but several, and when you read from something, indicate what you are reading from.

MR. HOULIHAN: I indicated that as being a memorandum dated November 15, 1975, by Mr. Stainton, and it is out of your files, is that correct, Mr. Stainton?

A No, the date is October 15th.

Q October 15th?

A Yes.

Q Are there papers attached to the memorandum?

A The attached letter to Congressman Horton from Martin Foss, Chairman of the Monroe County Planning Board, indicates the Post Office plans to continue use of the existing Post Office facility in downtown Rochester.

Q Is it fair to say that at that time the Post Office indicated that they were going to continue to use the existing building in Rochester?

A As of the date it was written, October 3rd, yes.

Q I believe on your direct testimony you said that you were concerned that the Post Office was going to abandon the facility totally. When was that?

A Well, we have been concerned all along, and there seems to be conflicting evidence on the part of the Post Office as to what their intentions are regarding the existing facility. It is also couched in terms of "until no longer economically viable to maintain the facility," which could be two years or twenty years. I don't know.

Q We know one thing, that the building out in Henrietta isn't going to be completed for another two years, isn't that right?

A That is the schedule, as I understand it.

Q So at least it is going to be for another two years?

A That's correct.

Q So it is not really couched in terms of two weeks?

A No. I was referring to when the other facility opened, continued operation of the downtown Post Office or any part of it after the new facility had opened had never been clear on the part of the Post Office.

MR. HOULIHAN: I move Exhibit D-18 into evidence.

Q I show you Defendants' Exhibit 20, which is a memorandum by you to Elisha Freedman and taken from your files, and is that accurate?

A That's correct.

Q And this was dated November 24, 1975?

A That is correct.

Q And at that point you said that it was your understanding that the Post Office will continue to use the downtown facility but on a reduced scale?

A That's correct.

Q Now this was subsequent to the ~~letter~~ of November 13th from Mr. Kenyon, is that correct?

A I'm not sure whether that letter was in my possession at

that time.

MR. DIGMAN: I have no objection to D-18, Your Honor.

(Defendants' Exhibit 18 marked in evidence.)

MR. HOULIHAN: I will move D-20 into evidence.

MR. DIGMAN: Where is D-19?

MR. HOULIHAN: I will move D-19 and D-20.

MR. DIGMAN: I have no objection, Your Honor.

(Defendants' Exhibits 19 and 20 marked in evidence.)

MR. HOULIHAN: I will read the last paragraph of the November 24th, 1975, memorandum to Elisha Freedman from Mr. Stainton, which was accepted into evidence.

"At the various meetings I attended, I have indicated that while the City is concerned about the loss of jobs from this location; nevertheless, as long as the Post Office is adamant about requiring

at least fifteen acres for an industrial-type of facility with extensive surface parking of Postal vehicles, that we had little interest in a tax-exempt facility locating in a central area."

Is that the fact, that you do have little interest in having the Post Office downtown?

A Could I see the letter, please?

(Defendants' Exhibit 20 handed to the witness.)

THE WITNESS: The letters do say obviously fifteen acres, or the memorandum says fifteen acres. All I can say is based on our previous discussions, obviously, the Post Office wanted a great deal more than that, and I would have to say that the memorandum was in error regarding the point on the fifteen acres.

Q But even if it were accurate with regard to the fifteen acres, is it the feeling that even if it were on fifteen acres, the City wouldn't want that big of a parcel tax exempt and not interested in having that in the City?

A No, I'm not prepared to say that. I'm prepared to say that we would not be in favor of a thirty-six acre facility in the downtown or central area of the City. I believe that was the intent of the memorandum.

Q So if the Postal Service concluded, then, that it needed thirty-six acres, then we could necessarily conclude that the City of Rochester doesn't want it downtown?

A In the central part of the City, yes.

Q I show you Defendants' Exhibit 10 marked for identification, which is an article published in the Rochester Democrat and Chronicle, dated June 21st, 1974. Are you familiar with that article?

A I don't recall the specific article. I knew generally that there had been reports that they had plans to buy land in Henrietta.

Q You knew that as early as March of 1974 when you had the meeting?

A That's correct.

Q And this appeared in June of 1974 and described a specific property that was to be purchased, and the purchase price and the acreage, is that right?

A That is what the newspaper article says, yes.

MR. HOULIHAN: I move D-10 in

evidence.

MR. DIGNAN: No objection, Your Honor.

(Defendants' Exhibit 10 marked in evidence.)

MR. HOULIHAN: This is from an article dated June 21st, 1974, and I will read the pertinent portion of the article:

"The Postal Service has confirmed the plans to build an area mail processing facility on Jefferson Road in Henrietta.

"It has agreed to purchase a forty-three acre site on the south side of Jefferson Road at the intersection of Saginaw Drive, said Russell L. Wylie, Postal Service Information Officer.

"The land will be purchased from Sulbro Corp. for about 1.6 million, he said."

There are other portions, and I think that is all I need for my purposes.

Your concern about the abandonment of the Rochester facility, you men-

tioned that there was certain support services that might be lost to the City, and in what way would they be lost?

A There are two kinds of activities associated with a facility like this. One might be, for example, the maintenance of vehicles, and I gave that example before. An employee of the Post Office will make certain purchases, or any employee of any industry or office will make purchases in the immediate vicinity of where they are employed, and basically, this is what supports downtown Rochester today is the employment in downtown, which is approximately 35,000 people. Obviously, if you take fourteen hundred jobs out of the downtown area and move them to Henrietta, it will have a negative impact on the retailing and other supportive services in the immediate area.

Q Are you aware that the Post Office maintains its own vehicle maintenance facility on that site?

A I am not aware of what specific arrangements are presently in effect or what would be in effect in the future.

Q Have you ever been to the Post Office?

A Yes.

Q I mean have you ever toured the property owned by the Post Office?

A Yes.

Q Then you are aware that they have a vehicle maintenance facility there?

A I know they have some facility, and whether that includes all of their vehicles or some of them, I don't know. There are other kinds of facilities that are maintained by the Post Office and services that are provided to them.

Q And those same services, obviously, would be available to a new tenant in that building should the building be re-occupied?

A If those services were needed, yes.

Q And also there is no evidence at this point that they are actually going to abandon that building, they are just going to reduce it?

A I think we have been over that, yes.

Q Mr. Stainton, what is the City of Rochester's interest in the construction of this facility in the Town of Henrietta, its new construction?

A You will have to rephrase the question. I don't understand it.

Q What is the City of Rochester's interest in the Post Office constructing a new facility in the Town of Henrietta?

A It has several concerns, and I believe we have been over

them. The only one that I have not specifically mentioned is the maintenance of mail service in the downtown community.

Q There is no concern that there is not going to be a mail service in the downtown area, is there? That has never been brought up as a problem, has it?

A The Post Office maintains that the service will be equal or better to what it presently has.

Q Now specifically, if we take out any consideration at all of the abandonment of the Rochester facility, does the City of Rochester have any interest in the new construction of the facility in Henrietta?

A Other than the question of employment, which we have discussed, and retail sales, which we have discussed, I would also add that we do not have any information as to what the impact on traffic patterns will be by a relocation of a facility in Henrietta. I don't know where the existing Postal workers live, and whether they live in the City or whether they live in the suburbs, and as to what impact that will have on our local street system.

THE COURT: That would be pretty indirect, wouldn't it?

A It could have some impact.

THE COURT: It would be pretty indirect, wouldn't it?

Q A pretty indirect impact, is that a fair statement?

MR. DIGNAN: It was asked and answered, Your Honor.

MR. HOULIHAN: I will withdraw the question.

Q Mr. Stainton, the new facility being constructed by the Postal Service is wholly within the Town of Henrietta, is that right, physically?

A Yes.

Q Any problems with the environment of that area, the area surrounding the proposed construction, would be the interest of the Town of Henrietta, is that correct?

A Primarily, the interest of the Town of Henrietta, and primarily the interest of those who live close by, but very general interest to the community.

Q The Town of Henrietta and the County of Monroe?

A Very much the City of Rochester is a part.

Q Is the City of Rochester a part of the Town of Henrietta?

A No, it is part of the County of Monroe, and we have representatives on the County Planning Board and on the Genesee-Finger Lakes Regional Planning Board.

Q Do you have representatives on both of those Boards?

A Yes.

Q And you have City representatives on the Genesee-Finger Lakes Regional Planning Board, and the City has been concerned about this since January, 1974; didn't you make those concerns known to the Regional Planning Board in 1974?

A Formally, we didn't at that time.

Q "Formally," but informally you did, is that right?

A We had a number of discussions as indicated earlier.

Q Then they knew about it in 1974?

A (No response.)

MR. HOULIHAN: Your Honor, I would like to move at this time the admission of newspaper articles designated, I believe D-2 through D-16.

THE COURT: Offer them one by one.

MR. HOULIHAN: All right.

Do you have any objection to D-2?

MR. DIGNAN: Could I ask for what purpose are these being offered?

THE COURT: Don't ask the purpose. I'm going to take them anyway whatever

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he says.

MR. DIGNAN: All right, Your Honor. Then I won't object.

MR. HOULIHAN: I offer in evidence D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-11, D-12, D-13, D-14, D-15 and D-16.

MR. DIGNAN: I have no objection.

(Defendants' Exhibits 2 through 16 marked in evidence.)

MR. HOULIHAN: Would you mark these for identification?

(Defendants' Exhibits 21 through 24 marked for identification.)

MR. HOULIHAN: Defendants' Exhibits 21 through 24 are additional newspaper articles concerning this construction. I move those into evidence.

MR. DIGNAN: I'm not going to object to those. Some of them are after the start of the action in this lawsuit, but I have no objection to them.

THE COURT: I will be able to

sort them out when I come to decide the case.

MR. DIGNAN: Yes, Your Honor. I just want to note it for the record.

THE COURT: You almost never get in trouble letting evidence in. Where you get in trouble is when you exclude evidence.

(Defendants' Exhibits 21 through 24 marked in evidence.)

MR. HOULIHAN: That is all the questions I have, Your Honor.

THE COURT: All right. We will take a recess at this time.

(Recess from 3:05 P.M. to 3:20 P.M.)

REDIRECT EXAMINATION

BY MR. DIGNAN:

Q Mr. Stainton, has the United States Postal Service indicated to you any effort that they made to find a tenant for the facility on Cumberland Street in the event they abandon it?

A No.

Q Mr. Stainton, I show you your notes, which is Defendants'

Exhibit 17 in evidence, notes of March 15, 1974, and your notes say: "Similar to Buffalo facilities." Is that correct?

A Yes.

Q And you know where the Buffalo facility is located?

A It is in the City of Buffalo adjacent to a rail area.

THE COURT: What is in those notes isn't material. The only reason he used those notes is to attempt to cross examine him. He has already testified fully about the March 15th meeting.

MR. DIGNAN: Yes, Your Honor, but he introduced the notes on his cross examination.

THE COURT: I know he did, but what I am telling you now is what is in those notes is not material at all. What is material is what happened at the March 15th meeting.

Q Did the Post Office mention at the March 15th meeting a facility in Buffalo, New York? Was there a mention of that?

A Yes.

Q And that facility, as you previously testified, is located

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Excerpts from Transcript of Testimony.
John Stainton for Plaintiffs, Redirect by Mr. Dignan.

in the City, to the best of your knowledge, is that correct?

A Yes, it is.

Q Do you recall a discussion pertaining to what percentage of the budget of the Postal Service was spent on labor?

A The operating budget, the discussion indicated about eighty-five per cent.

Q Now, Mr. Stainton, Mr. Houlihan read a letter to you from a John W. Powell, Congressional Liaison Officer, United States Postal Service, to Congressman Horton. Would you read on Page 2 of that letter? It is part of Exhibit D-18 in evidence. It is the third from the last paragraph on Page 2.

A (Reading): "The site selected is adequate in size, environmentall suited for Postal purposes, is consistent with orderly municipal planning and receives the approval of the City."

Q Do you know what Mr. Powell is referring to in that paragraph, sir?

A No, I don't.

Q And that follows the indication in the paragraph before that about the Ormond-Leopold site, does it not?

A Yes.

Q Mr. Stainton, Mr. Houlihan showed you an exhibit and had you read from the top page of Defendants' Exhibit 19, which is in evidence, and had your memorandum read in. And attached thereto, is there not, sir, a two-page document at the end from a Martin A. Foos to Honorable Frank J. Horton, is that correct?

A That's correct.

Q Would you care to read, please, the last part on the first page of that letter into the record?

A (Reading): "Just recently, this Board discovered that an environmental assessment of the proposed relocated Post Office facility had been prepared. After obtaining and reviewing a copy of the environmental assessment, it is our judgment that the assessment does not comply with the intent of the National Environmental Protection Act, and it is that concern that I wish to bring to your attention. In essence, the assessment (which was actually accomplished over a year ago) confined its investigation to an analysis of the environmental effects of the construction of a relocated facility on a specific site in the Town of Henrietta. We would concede that the construction of the kind of facility being anticipated on that particular site would have very little effect on that particular site and

* * * * *

Excerpts from Transcript of Testimony.
Margaret A. Ely, recalled for Defendants, Direct
by Mr. Houlihan.

Our other witnesses are long, Your Honor.

MR. DIGNAN: He asked for out-of-town witnesses.

THE COURT: I just said I see no purpose in starting the Defendants' case here unless you can dispose of out-of-town witnesses now.

MR. HOULIHAN: The only witnesses that will be short would be these two witnesses, and they are both local, and they have been here since two o'clock, and it should be very short testimony.

THE COURT: All right, I will take it, but I anticipate that it won't be short.

M A R G A R E T A. E L Y,

recalled as a witness by the Defendants, having previously been sworn, testified further as follows:

Q Miss Ely, in response to my subpoena, did you search the records of the Genesee-Finger Lakes Regional Planning Board to determine if there were any letters contained in the files of that Planning Board which would indicate knowledge that the Post Office was going to move to Henrietta prior to June of 1975?

A Yes.

MR. HOULIHAN: Would you mark these for identification?

Excerpts from Transcript of Testimony.
Margaret A. Ely, recalled for Defendants, Direct
by Mr. Houlihan.

(Defendants' Exhibits 25 and 26 marked for identification.)

Q D-25 marked for identification is a letter dated March 11, 1974, to Mr. Isaacs, Assistant Postmaster General, signed by Mr. Angelo Chiarella, with a carbon copy to Stuart Denslow, Genesee-Finger Lakes Regional Planning Board. That letter is one of the letters that you brought with you, is that correct?

A Correct.

Q And D-26 marked for identification is a letter of May 6, 1974, to Mr. Nathan Robfogel from Mr. Angelo Chiarella, with a carbon copy to Stuart Denslow, Genesee-Finger Lakes Regional Planning Board. This is also a letter you brought from the Planning Board?

A Correct.

Q Mr. Denslow was the Executive Director at the time that these letters were received, is that correct?

A Correct.

Q Mr. Denslow subsequently left the Regional Planning Board, is that correct?

A Yes.

Q When did he ultimately leave?

A December 29, 1975.

Excerpts from Transcript of Testimony.
Margaret A. Ely, recalled for Defendants, Direct
by Mr. Houlihan.

Q So this is some two months ago that he had left?

A Yes.

Q And you searched these records today, did you not?

A Yes.

Q And these records were found at the Planning Board?

A Yes.

Q But you also advised me that they were found in the files of Mr. Denslow?

A Yes.

Q But they were maintained at the Planning Board?

A Yes.

Q Now during your examination, do you recall an exchange where Mr. Dignan objected to a letter as being notice to the Planning Board because the letter was from some man named Mr. Chiarella in Midtown Holdings Corporation?

A Yes.

Q And did you know at that time that Mr. Chiarella was a member of the Planning Board of Genesee-Finger Lakes Regional Planning Board?

A Did I know yesterday?

Q Yes.

A Yes.

Q When I asked you at the time subsequent to that exchange

whether anyone at the Planning Board was aware of this, you said, "No," yet you know Mr. Chiarella was a member of that Board and did, in fact, know, is that correct?

A Yes, but I understood you to say by the "Board," meaning the staff and the office as opposed to the Regional Planning Board, the twenty-four member body.

Q There is no question, then, in your mind that the Regional Planning Board, at least in the person of Mr. Stuart Denslow, and at least in the person of Mr. Chiarella, knew of this in January of 1974?

A Right.

MR. HOULIHAN: Thank you.

MR. STUMPF: We have no questions, Your Honor.

MR. HOULIHAN: We will call Mr. Chiarella, Your Honor.

A N G E L O J. C H I A R E L L A,

called as a witness by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Chiarella, what is your occupation?

A I am an architect and presently employed as President of

Excerpts from Transcript of Testimony.
Angelo J. Chiarella for Defendants, Direct by Mr. Houlihan.

Midtown Holdings Corp.

Q In addition, are you on the Genesee-Finger Lakes Regional Planning Board?

A I am an appointee, yes.

Q How long have you served on that Board?

A Approximately four years.

Q You were on that Board in January, 1974?

A Yes.

Q Did there come a time that you learned of the proposed relocation of the United States Post Office to Henrietta?

A Through the newspapers, yes.

Q You read that in the newspapers?

A Yes.

Q Do you recall when that was?

A I assume early in 1974.

Q What, if anything, did you do in response to that?

A I became concerned as a resident of the City and the County and of the Region and because of my exposure to the planning problems of the community, I addressed myself to those that I thought would be representative --

THE COURT: He wants to know what did you do? Did you write a letter to somebody?

A I wrote a letter to the Post Office initially.

Q And you were very interested in this, is that correct?

A Correct.

Q Did you also have conversations with other members on the Genesee-Finger Lakes Regional Planning Board?

A Not necessarily at that time.

Q Did you have any conversations with any members of the Planning Board in 1974 concerning this issue?

A In late '74.

Q In fact, those conversations were with Stuart Denslow, is that correct?

A I have had hundreds of conversations with Mr. Denslow and not necessarily in early '74 and not necessarily --

THE COURT: We don't want to know when "necessarily" they were. We want to know when they were, if any.

THE WITNESS: I don't remember when I had my first conversation with Stuart Denslow on the Post Office in 1974.

THE COURT: Then I take it that although you knew this as a member of the Board early in 1974, as far as you know, you didn't talk to any other members or

Excerpts from Transcript of Testimony.
Angelo J. Chiarella for Defendants, Direct by Mr. Houlihan.

the staff of the Planning Board about it?

A In early '74 I would not have, no.

Q How about late 1974?

A Late 1974 I would have.

Q I show you Defendants' Exhibit 25, which is a letter purportedly from you to Mr. Isaacs, dated March 11, 1974, and another letter to Nathan Robfogel, dated May 6, 1974, signed by you, and at least at that point you were communicating to other people and members of the Regional Planning Board of your concern that the Post Office would relocate, is that correct?

A That is not accurate.

Q Why isn't that accurate?

A It is not accurate because members of the Genesee-Finger Lakes Regional Planning Board did not necessarily get copies of this correspondence.

THE COURT: I don't care what they "necessarily" did. I want to know if they did, if you know.

A I don't know that they got copies of this letter, Your Honor.

Q You directed a copy to Stuart Denslow, Genesee-Finger Lakes Regional Planning Board, did you not?

A He is not a member of the Board. He is employed by the

Board as a Director.

Q He is a member of the staff, is that right?

A Yes.

THE COURT: Do you distinguish between the Board and the members of the staff?

A Very clearly, Your Honor. I do. The staff and the Director responds to policies and actions initiated by communities that the Board emanates from.

THE COURT: Are you attempting to say that even though you as a member of the Board had knowledge of something regarding this matter, that the Board itself or members of the staff didn't have knowledge of it.

A That is exactly what I am trying to say, Your Honor.

THE COURT: I find that hard to believe.

Q You did, in fact, direct carbon copies of this letter to Stuart Denslow, who was a staff member?

A As a Director, yes.

THE COURT: What did you send it to him for if you considered them separate?

Excerpts from Transcript of Testimony.
Angelo J. Chiarella for Defendants, Direct by Mr. Houlihan.

A As a general information-gathering device to try to understand --

THE COURT: Just as a matter of curiosity, is that right?

A No, as a matter of information, Your Honor.

THE COURT: You thought he was concerned with the same matter you were concerned with?

A No. I thought he should be -- should anticipate that there might be further developments.

THE COURT: Exactly, in other words, that he would be concerned about exactly the same thing that you were concerned with?

A I would hope that he would be, yes.

Q Did you also talk with other members of the Board concerning your concern for relocation of the Postal facility?

A Yes.

Q And that was in late '74?

A I would probably have talked to members of the Board in late '74 about the subject, yes.

THE COURT: I don't want to know what you "probably" would have done. If

you don't remember, I have no criticism whatsoever, but to say you probably did tells me nothing.

Q Did you?

A Well, since I can't identify who I talked to and the date, I would have to say I don't know.

THE COURT: No, you don't have to say that at all. You can say you did talk to someone but you don't know who they were.

A That would be my answer. I did talk to members of the Board, and I can't remember who they were.

Q Did you also talk with members of the staff in 1974?

A I can't recall that except, of course, Mr. Denslow.

Q Other than Mr. Denslow?

A Yes.

Q You did talk to him in '74?

A Yes.

Q And he is the leader of the staff?

A He is the Director of the staff, yes, sir.

MR. HOULIHAN: I move Exhibits D-25 and D-26 into evidence.

MR. DIGNAN: No objection, Your Honor.

(Defendants' Exhibits 25 and 26 marked in evidence.)

MR. HOULIHAN: I have no further questions, Your Honor.

MR. DIGNAN: I have no questions, Your Honor.

MR. DIGNAN: Could I beg the Court's indulgence for one minute to renew our motion for a preliminary injunction at this time?

THE COURT: Motion denied.

MR. DIGNAN: Does Your Honor want to hear argument why we believe we are entitled to it?

THE COURT: All right, you can have your argument.

MR. DIGNAN: Your Honor, we believe that we have shown that there has been a violation of NEPA and the Intergovernmental Cooperation Act through the testimony elicited from the three witnesses so far in this matter.

We believe that the United States Postal Service has not complied with NEPA in the following regard:

1. It did not confer with and consult with,

in the manner provided by NEPA, in arriving at the decision to make the move it did.

2. It did not do an assessment with respect to the alternatives, to any alternatives, in its proposed action to move to Henrietta. There is nothing shown that they did do an assessment with regard to that.

3. Under the Intergovernmental Cooperation Act and NEPA, it is required that the Postal Service meet and cooperate with the various public planning agencies before it makes its decision to make the move that it did.

We have shown that none of this has been done, Your Honor, and the Postal Service, quite to the contrary, the only thing that has been brought out as to any announcement was one newspaper article about an intention to purchase some land.

We have said from the beginning in this case, Your Honor, that the Postal Service kept this matter hidden, and they did not use the law as they must do to the maximum possible extent, Your Honor.

Counsel for the Government indicates that he does not know of any cases in which the question of

abandonment is a concern of NEPA. Your Honor, I cite to you the City of New York v. United States, in the Second Circuit. In that case the City of New York sued the United States for the abandonment of 1.8 miles of railroad line on the outskirts of New York City. Your Honor, they didn't raise the NEPA defense until they got to the point where they were before the ICC and they raised the NEPA question there. The Commission overruled them and said they were too late, and there wasn't a consideration of the ICC. That matter went to the Second Circuit, Your Honor, and the Court said, and I think this language is important and I would like to read it.

I cite City of New York v. United States, 337F. Supp. 150, (Eastern District of New York 1972), modified, 344 F. Supp. 929. Here, the Court remanded the matter to the ICC, again with the argument being made of laches, which isn't even pleaded in this case, Your Honor. The Court said, as follows:

"To permit an agency to ignore its duties under NEPA with impunity because we have serious doubts that its ultimate decision --"

THE COURT: What is the citation?

MR. DIGNAN: It is 337 F. Supp. 150 (Eastern District of New York 1972), modified, 344 F. Supp. 929.

THE COURT: I understood you to say you had the case in the Court of Appeals in the Second Circuit.

MR. DIGNAN: I am sorry, Your Honor, but this is the Eastern District of New York.

THE COURT: That is another District Court.

MR. DIGNAN: Yes, it is, Your Honor. (Reading):

"To permit an agency to ignore its duties under NEPA with impunity because we have serious doubts that its ultimate decision will be affected by compliance would subvert the very purpose of the Act and encourage further administrative laxity in this area. The systematic investigation of the abandonment of the Railroad's operations which NEPA requires may well reveal substantial environmental consequences and, given that the most recent offer of the Users Association may possibly provide an economic alternative to abandonment, compel further consideration of its propriety and necessity. In any event,

preservation of the integrity of NEPA necessitates that the Commission be required to follow the steps set forth in Section 102, even if it now seems likely that those steps will lead it to adhere to the present result."

Your Honor, that is one case. There is a case unpublished. I will hand it up to the Court. We have cited it in our brief, Prince George's County, Maryland v. Holloway. It is a civil action in the D. C. Circuit, handed down in December of 1975.

THE COURT: District Court?

MR. DIGNAN: The D. C. Circuit, yes. That is a Circuit Court, D. C.

THE COURT: You mean the Court of Appeals?

MR. DIGNAN: No, Your Honor -- D. C.

In that case NASA was moving out of a county. They did an Impact Statement in that case, Your Honor, and the Court enjoined them because they didn't go far enough in the Impact Statement. They were abandoning a facility in a county and moving to another county in another state, and they found that Prince George's County had standing in that matter, even though the

facility was moving out of that locale, and they enjoined NASA from going forth without completing a full and complete Impact Statement in that case.

THE COURT: They enjoined them at the conclusion of the trial?

MR. DIGNAN: No, Your Honor. Let me back up. The facts are as follows: They filed for a temporary restraining order and were refused. They went for a preliminary injunction, and it was followed by a hearing on the preliminary injunction.

I think the Hanly cases in this circuit clearly provide that of necessity NEPA must be construed to include the protection of the quality of life.

THE COURT: Before you make this lengthy argument, I agreed to try this case instead of granting a preliminary injunction, and I brought the case on for trial in less than thirty days from the time it was commenced. I anticipated and was led to believe that I could finish this case in two days. Now, it turns out that I can't. But I am giving you a very short adjournment until the first of March, which is only another week.

MR. DIGNAN: I agree, Your Honor.

Excerpts from Transcript of Testimony.
Discussion.

THE COURT: I don't propose to grant any preliminary injunction when the time of the finish of this trial and the decision in the case is so near. I don't propose to halt construction that has gone so far as this has. . . . . .

MR. DIGNAN: I am representing my client. I must make the move to do it.

THE COURT: I am not criticizing you for making it. I want to make known my attitude to your application at this time.

MR. DIGNAN: I appreciate that, Your Honor. I would just wind up my argument by saying that there have been numerous cases where construction has been allowed to go forth, but the Court has provided that an Impact Statement be filed within a period of time or construction would be halted and these cases in our brief hold that.

THE COURT: It wouldn't be very long for you to wait for an injunction either, due to the fact that I am setting this case to finish on the first session, commencing the 1st of March.

MR. DIGNAN: You are right, Your Honor, but

it would behoove me to argue on behalf of my client all the way, and I would renew our motion at this time for the reasons already previously stated in this matter, contained in our brief and contained in the papers and testimony so far, and for the reasons I have already stated.

THE COURT: I deny the motion.

MR. HOULIHAN: March 1st, Your Honor?

THE COURT: Is that agreeable?

MR. DIGIAN: It is agreeable with me, Your Honor. Will all witnesses be available that have been subpoenaed?

THE COURT: I don't care what witnesses will be subpoenaed. I shall expect to finish this case at the session commencing March 1st.

MR. HOULIHAN: I am prepared to do it.

THE COURT: How long do you anticipate this is going to take?

MR. HOULIHAN: About three-quarters of the day. It shouldn't be any longer than that. I think I have three witnesses.

THE COURT: There is every likelihood, then, that we can finish it within a day or two. All right, March 1st.

BEST COPY AVAILABLE

Excerpts from Transcript of Testimony.
Adjourned.

I would like to say now in the interest of a very early disposition of this case that when we finish this case, I would like to be able to decide it within a reasonable time. Now, I can't do that if counsel is going to ask for thirty days to file a brief and so forth. I will do everything I can to get this case to an early decision. But I can't overcome the fact if counsel want thirty days to file a brief. That delays me.

MR. DIGMAN: Our brief is ready, Your Honor.

THE COURT: I just want to give you due notice.

MR. DIGMAN: Would Your Honor want proposed findings?

THE COURT: I certainly do. That doesn't mean you have to have the proposed findings immediately when you finish. I will give you two or three days to prepare them, but I mean I don't want any inordinate length of time to ask to submit any papers.

MR. DIGMAN: No, Your Honor.

(At 4:00 p.m., an adjournment was taken to Thursday, February 26, 1976, at 10:00 a.m.)

* * * * *

Excerpts from Transcript of Testimony.
Proceedings, dated 2-26-76.
Motion to Amend Answer to include the Defense of Laches.

Rochester, New York

Thursday, February 26, 1976

10:00 A.M.

– –

MR. HOULIHAN: If the Court please, the Government filed notice of motion and affidavit to amend its Answer to include the defense of laches. The affidavit sets forth the fact that through inadvertence and oversight on the part of the Government, we neglected to plead laches as is required under Rule 8(c) of the Federal Rules of Civil Procedure. However, since this was a short and prompt trial, we had to get our Answer in very quickly, but as part of our opening statement, the defendants advised the Court and the plaintiffs that we intended to rely on laches as a defense.

The plaintiffs are well aware that laches would be pleaded as an affirmative defense by reason of the fact that the trial brief that they submitted on the

first day of trial, Point 6 of that trial memorandum, specifically addressed that issue. Since they were well aware that laches would be used in the affirmative defense, and in fact took steps in their case to counteract this defense, there can be no resulting prejudice to them; and therefore, the Government respectfully requests that the Court grant leave to the defendants to file an amended Answer to include the additional defense of laches.

MR. DIGNAN: Your Honor, I would be opposed to the Court doing that. Under Rule 15 I realize the Court can grant leave on that, but we will oppose it at this time.

THE COURT: I am satisfied that there is no surprise and no prejudice by the amendment sought, and I will grant the motion.

MR. HOULIHAN: The Government calls William Chapp.

* * * * *

A I don't know.

Q You do not know?

A No.

Q Mr. Chapp, I show you Plaintiffs' Exhibit 36, which I believe you testified was in the files at the time you reviewed them, is that correct?

A Yes.

Q Did you review these files when you took your present position over in June of 1974?

A Generally, yes.

Q And did you have a chance to review what is now Exhibit D-36 at that time?

A Yes, it was there. A detailed review wasn't required at that point, since the decision had already been made.

Q The decision had already been made by the time Exhibit D-36 came --

A No, by the time I became involved in this project.

Q Oh, excuse me.

Would you turn to Page 3 of Exhibit D-36, please.

(Witness complies.)

Q And the date on this Exhibit again, Mr. Chapp, is when, if you can recall?

A (No response.)

* * * * *

Excerpts from Transcript of Testimony.
Milford C. Beers for Defendants, Direct by Mr. Houlihan.

MR. DIGNAN: I withdraw the question.

Q Do you know personally, Mr. Chapp, as to the exact cost it would have cost to renovate the General Dynamics plant, including the cost of land? Do you know of your own personal knowledge?

A No.

MR. DIGNAN: No further questions.

(Witness excused.)

M I L F O R D C. B E E R S,

called as a witness by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q By whom are you employed?

A United States Postal Service.

Q And what is your title?

A At present, Field Supervisor, Real Estate, with the Eastern Region at the Philadelphia Area Facilities Office.

Q The Eastern Region, does that include Rochester-Monroe County area?

A Correct, it does. It is one part of our area.

Q Around January and February of 1973, what was your job?

A My position at that point was a Realty Specialist with the Department of Army Corps of Engineers, which were engaged by the Postal Service to perform real estate and engineering functions under an order by Office of Management and Budget.

Q As part of your duties as a real estate specialist in February of 1973, did there come a time that you were requested by the United States Postal Service to find adequate sites for the construction of a facility to service the Rochester area?

A Yes. On February 23rd I received an assignment, which I believe was dated February 12th, from the Corps of Engineers, Office of Chief Engineer in Washington, to look for sites within the south and southwest perimeters in and around the City of Rochester and adjoining communities for the purpose of establishing a new major facility for the Rochester, New York, area.

Q And were you given any size limit as to the size of the site that was required?

A The minimum site size required was thirty-six plus acres.

Q And what does that mean "thirty-six plus acres"?

A This means that the minimum site size requirement would be thirty-six acres in itself.

Q What if the Town zoning law required setbacks a certain number of feet? How would that relate to the site size?

A It would increase the size because when I say "minimum," these are requirements set forth by the D&O concept of the Postal Service for a minimum of thirty-six acres, plus any setbacks or requirements by the community in which the facility might be located. Also, it would include in our way of looking at it in the "north country" the availability for snow storage, because of the cost of removing snow is quite expensive. So this would also increase the site size, so thirty-six as a minimum might increase the present size at Henrietta of forty-three, plus or minus, acres.

Q You suggest there that snow removal would be on top of the considerations of a minimum of thirty-six?

A Yes. This would be a general thing. We have found this to be very true. In most of our concepts they allow for a small amoun., but in areas such as Rochester-Syracuse, "north country," where we are subject to heavy snows and a minimal snowfall in most years and a maximum in many years, we have to allow for a little additional area for this purpose.

Q What, if anything, did you do after you received orders

to look for a suitable site in the Rochester area?

A I made a trip to Rochester, which I had been familiar with because I had been working in this area on small cases for the U. S. Postal Service under the Corps of Engineers and formerly with the Post Office Department before being assigned to the Corps of Engineers, and I made a survey of the area by stopping into the City of Rochester Assessor's Office, the Town Assessor's Office, the Town of Gates, the Town of Brighton, the Town of Henrietta, which would incorporate areas to the south or southwest of the area set forth in the preferred perimeter area.

Q Do you recall who you met with in the City of Rochester Assessor's Office?

A I do not. The reason I do not recall is at the time I had a very limited time to make a preliminary analysis of the area. I did go into the Assessor's Office, and their answer to me was that they had a parcel that the City was aware of in the Assessor's Office of only twenty-one acres.

THE COURT: You told me you were looking for a site to the south of Rochester

THE WITNESS: Your Honor, the south and southwest areas within and in

communities adjacent to the City of Rochester, within the City limits and out. That was my assignment.

THE COURT: Then I misunderstood you. I thought you were just looking for a place outside the City.

THE WITNESS: No, both within and out. So after making the contact at the Assessor's Office, being notified that the only parcel they were aware of that would accommodate any near size to this is twenty-one acres, I requested to know where this might be located, and this is in 1973, of course, and they mentioned to me that this was possibly going to be incorporated with some urban development property at the areas of Lee and Lexington Road within the City limits. So I took this under advisement, and I was advised to go see a gentleman by the name of Mr. Van de Vate, and he was representing, as Executive Secretary, the New York State Urban Redevelopment Corporation in the

Rochester area. I also made contact with the Assessor's Office in the Town of Gates. I made contact with the Assessor's Office in the Town of Henrietta and the Assessor's Office in the Town of Brighton. And I found sites in each one of these communities which comprised a grouping of sites in the neighborhood of fifteen sites.

Many of these sites were located, I thought, in my own opinion, which was only an opinion at that time, from an operational standpoint, might be outside, but my job not being operations, these sites were all included, because it is up to the operational people to make a determination.

Q So it was your job, then, just to find parcels of property big enough?

A And available, right.

Q And available?

A Right.

Q Why didn't you go to the Mayor of the City of Rochester?

A It isn't a normal practice in real estate to disturb

people in this capacity unless it is an absolute necessity because of the possibility of change of zoning or something that may come to pass as to questions that would be asked of the City officials, not only the Mayor, but a Council or a Planning Board, and usually, our dealings in real estate start with the Assessors to find what is available. If there is further investigation necessary, we would go to the Planning Board. We would go to possibly find out about the public utility, such as water, sewer, and so forth, from other officials within the township, and the only time we would go to a Supervisor or Mayor or Council or Planning Board would be if there is a zoning problem anticipated, something of this nature, that we would like to discuss with them to see if we could fit within their realm of thinking without disturbing the general situation within the community.

Q Is it your experience, then, the Assessors are the people who are best aware that parcels are available in the City?

A This is correct, and in most townships today, thank goodness, and in the State of New York, especially, that there are tax maps available through either counties, towns and in cities.

Q You said that as a result of this search in the towns

that you described and in the City of Rochester, you accumulated approximately fifteen sites, is that right?

A This is correct, yes.

Q Do you know where these sites were located?

A Oh, yes, very definitely. In fact, after locating these sites through the procedure I have aforementioned, I contacted Mr. D. S. Fleming, who was then District Manager of the Empire District for United States Postal Service, along with Mr. Finn, Postmaster and Manager at Rochester, and we made a trip in two days and covered all of these sites. These sites extended, as an example, one down at the area of the south perimeter on Highway 15, which is known as West Henrietta Road and Calkins Road at the corner. One part of this parcel was zoned commercial, and the other part was residential. This was turned down by Mr. Fleming and Mr. Finn as being too far away to satisfy a transportation-type of situation between the proposed new facility and the immediate downtown area of Rochester.

Another site we located, and I'm just picking sites at random, was out on the corner of Jefferson Road and the property owned by RIT, and after investigating this property further, I found out that there were commitments

on this for housing for students at RIT under a New York State-type of grant, I imagine with some Federal monies involved. So finding this out, of course, we had to eliminate that site, and I believe, to my knowledge, that has been controlled for that purpose at this point.

We also looked at the properties on the southwest side of the airport, and by checking with the maps, the extended runways would cut us off on a transportation situation in the future. So this site was eliminated for that purpose.

We did look at sites, the UDC sites, which were two in number, which were on the corner of Lee and Lexington Road adjacent to each other. They comprised approximately fifty plus or minus acres at each site. We further investigated that for utility and so on and so forth, and it was made part of our original site report.

Buffalo Road, we had a site which was elevated just off the 490 Extension, the westerly entry. That was eliminated. It was part of our site that was on the corner of Buffalo Road, I believe; and Pixley Road, I believe, was the site side road.

We also had sites offered to us further in towards the City which were not of any size that we could use.

Excerpts from Transcript of Testimony.
Milford C. Beers for Defendants, Direct by Mr. Houlihan.

We investigated these sites. I turned over the mappings, and so on and so forth, which I picked up from the owners, and they were very generous to offer these to us. And it was decided that because of a transportation factor and odds and ends, these would not be applicable to the selection.

Q Now with the District Manager, Mr. Fleming and Mr. Finn, the local Postmaster and yourself, you went and visited these fifteen sites and narrowed the sites down to how many?

A Seven sites, I believe.

Q I show you Defendants' Exhibit 35 in evidence, a Preliminary Site Selection Report, which was submitted, it appears by Milford Beers, and that is you, is that correct?

A That's right.

Q And that Preliminary Site Selection Report took into consideration seven sites, is that correct?

A The original report was five, and two additional sites were added as Site 6 and Site 7.

Q And those are attached on that document, is that right?

A They were attached, and they were designated on a strip map, and the pertinent information to the new figures used for the proposed new facility are attached also,

correct.

Q And this Preliminary Site Selection Report was prepared after you made contacts with the Assessor's Office in all of the towns and eliminated it down to these seven sites?

A This is correct.

Q What happened next?

A The next procedure which happened in this case, I sent this report through the Corps of Engineers, New York District Office, 26 Federal Plaza, New York, and from there it was forwarded to the Division Headquarters at 90 Church Street in New York City. From there it was forwarded to Headquarters in Washington of the Corps of Engineers. In return, they set up a Site Evaluation Team, or at that time it was called a Site Selection Team. It is now called a Site Evaluation Team, which was organized, and I was asked to be in Rochester to assist the Site Team and to participate in looking at the sites that were sent in on a Preliminary Report, which were seven sites. Also in that the evaluation consideration by some of the members of the Site Selection Team was asked regarding the sites that were not considered for the finalization for them to select from. And they at that time

were also offered and did take advantage of looking at some of the sites of the fifteen total, even though they had been eliminated by Mr. Fleming and Mr. Finn because of an operational situation.

THE COURT: We will take a recess at this time.

(Recess from 3:20 P.M. to 3:30P.M.)

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Just prior to the recess, Mr. Beers, you mentioned that a Site Selection Team had visited Rochester. How many people were within that group?

A Eighteen, to my best recollection.

Q What kind of departments were represented by that group?

A This was made up of people of Program Management at Headquarters in Washington, made up of real estate people at both the levels, or three levels, myself being present, Regional and Headquarters. It was made up of people from EEO in their capacity. We had three representatives at the meeting, and prior to that time it was noted to me that they had some fifteen or sixteen people that had been in the area for two days looking over all the sites from their standpoint of view regarding the sites that

were under consideration. There were also people there from Engineering, and the District Manager, Mr. Fleming, was present. And I would say that was just about the bulk of the capacity of people that were there.

Q Defendants' Exhibit 38 marked in evidence is a report of the Site Selection Team, and it only shows the signatures of eight people, and your signature being one of them. There were other people present at the time that that decision was made, and why are there only eight signatures appearing on there?

A That's correct. There were other people present, but the reason for only these signatures were these people were the ones who were actually designated as the Committee under the rule at that time, of the U. S. Postal Service, of course, who were conducting this. And this was set forth by the head of this Committee, who was Mr. M. M. Donigian, Office of Program Management.

Q So these were the bosses?

A That's correct.

Q Now prior to the time that the Site Selection Team went out, did you prepare a site survey that is designated as Defendants' Exhibit 36 marked in evidence?

A This is correct.

Q And what is contained inside that report?

A The report is made up of the Purpose and Scope, the Site Selection Team Findings, the Assumptions. At this time I have to say that we were authorized to recommend a site. That is not prevalent at the present time under our present regulations, which really doesn't have any connection with this, but I wanted to point that out -- and a Detailed Site Analysis of the site as the recommended site. Also, a composition of the Alternate Sites that were considered, Comparable Real Estate Sales Data, and the attached Exhibits.

Q So that would be supplemental to Defendants' Exhibit 35, which was the Preliminary Site Selection Report, is that correct?

A That would be correct, yes.

Q After review of the sites by the Site Selection Team, did you call a meeting to determine what sites were most appropriate?

A Yes. After the Team, as such, went out and saw all the sites, and as I related before, did also want to see some of the sites that had been among the balance of eight, consisting of the full fifteen sites, and when they were satisfied that they had seen what they wanted to see, we

came back to the District Manager's Office on Town Line Road, Mr. Fleming's office, and we sat down and we had a full round-table-type of discussion with every person there having a right to speak about each individual site, and asked further questions about them, and at that point it was determined -- and I can relate now to this document (indicating)?

MR. HOULIHAN: Yes.

MR. DIGNAN: Which document?

THE WITNESS: This is the August 8th Memorandum for Record, Defendants' Exhibit 38.

Q Defendants' Exhibit 38?

A Yes, which was the outcome of this meeting. And Site 5 was the site that was considered the site preferenced by everybody and reads: "If Site No. 5 is not controlled within reasonable time, Site No. 6 is to be considered as a prime selection."

Q Site 5 is located in the Town of Brighton, is that correct?

A That is correct, and if I may just elaborate just a little on that, Site 5 being a site in the Town of Brighton at the junction at the proposed extension of Route 47, the Outer Loop, was considered to be the site.

However, it was zoned as a residential piece of property, had been set aside under pre-programming by the Town of Brighton for multi-family, I believe, apartments at that time. Knowing this from the Assessor's Office and the reports we found out from the officers in the Town, such as the Zoning Officer and so forth, we then arranged for a meeting with the Supervisor of the Town of Brighton who graciously awarded us the time with the members of the Planning Board in an off-scheduled type of meeting to determine whether they might have any adverse feeling about a change of zoning which would be required for us in order to obtain the site -- finding that they did.

Q What was the result of that meeting?

A The result of that meeting was that they determined that they would prefer that we did not go any further with that site, that they had the Master Plan for it, and under those circumstances did not want the zoning changed, so we backed off the site and moved over on Site No. 6.

Q Now Site No. 6, where is that located in relation to the Sectional Center Facility?

A This is located one road, and I would say within less than a quarter of a mile to the south of the SCF facility, on Town Line Road. It is located on Jefferson Road, east

of East Henrietta Road and two parcels east of the proposed Genesee Expressway on the south side of Jefferson Road.

Q And the proposed Genesee Expressway is expected to be completed in that area, is that right, sir?

A The indication we were given by the New York State Department of Transportation, that they had acquired the sites along the expressway. They acquired the sites for this proposed expressway. I would also like to further elaborate while doing this evaluation of sites, it became known to us by the media in the Rochester area that the proposed Genesee Expressway, even though the State had acquired certain sites, certain properties for the Genesee Expressway, that the City of Rochester, in turn, was not going to allow the Genesee Expressway to come any further into the City than the Outer Loop.

Q Would that have any effect on your selection of sites within the City?

A Yes, it would in this respect, and I am not a transportation specialist, but it is part of our work, and we have to acknowledge it. If a site were located inside of that area and the Expressway was not considered open to come into the City and was restricted from coming into

the City beyond the Outer Loop or Route 47, this would mean in the Rochester area, as it is a bowl-type of area, in my opinion, with most of the area built up to the south, the east and the west, and the north, of course, is the Lake, which we are all knowledgeable of, I am sure, it would preclude us from going directly into a facility on the south end as was programmed in the initial assignment. There not being any sites available in that south end, we hadn't really determined anything, because there was nothing available for us. The City had determined this for us when I went to the Assessor's Office, but if we had a site in there, and we will assume that we did, this would still make us go into the Outer Loop and then into the Inner Loop, according to the pattern of roads to the east or the west of Rochester. We would have to go to those areas to get the mail to that facility and out of that facility or use already overcrowded City streets to make entrance to a facility within the City area.

Q The site that was ultimately selected, Site No. 6, you say is within a mile of the Sectional Center Facility that now exists?

A Less than a mile.

Q Less than a mile?

A Yes.

Q What is its relationship to the New York State Thruway?

A It is a little closer. The new site is just a fraction closer by that portion of a mile to the New York State Thruway. It was asked in the Town of Henrietta when we discussed this with the Town of Henrietta officials whether we would be putting any additional heavy tractor-trailers and heavy truck traffic on their highways, and of course, it was determined we would not, because most all of our heavy equipment trailers and everything coming into the Town Line Road now come through on West Henrietta from the New York State Thruway Exit 46. Other tractor-trailers and trucks and so forth are all serviced into the same facility now, so we would not be adding anything more to their roads. We were already in that same general area and have been since 1968.

Q And this was discussed with the Town of Henrietta officials at that time?

A On numerous occasions, yes.

Q Specifically, with regard to employees and the EEO officials, were there any discussions regarding any of these cites concerning the impact that they might have

on employees?

A Yes. At our meeting and final meeting for the Evaluation Team, or the Site Selection Team in August, it was noted by people from EEO that the only action that they had derived from all of the sites, and these were the seven sites under consideration at that time by the Site Selection Committee, was the fact that they might have a slight housing problem in the Town of Brighton.

With exception to that, they found nothing detrimental about any of the sites, all seven, and they thought the one little question in their mind with the Town of Brighton would be a very, very minor situation, and they would not object, and in fact, they did not object because Mr. Hughes, who was heading their delegation, signed our agreement to originally take Site No. 5, which was in the Town of Brighton, but due to the further investigation, as I mentioned in my previous testimony, we backed off because it was a residentially zoned piece of property in the Town of Brighton, Site No. 5, and we did back off and move to Site No. 6, which was zoned industrial, for the purposes and permitted use by the U. S. Postal Service.

Q In your Preliminary Report, that was prepared some time in February of 1973, you made a specific identification

of seven sites, and Defendants' Exhibit 39 in evidence, which is the Report, Preliminary Report by the Equal Employment Opportunity people, they examined also seven sites. Can you tell me if those are the same seven sites?

A This is correct.

Q So all seven sites were considered by EEO, based upon your Preliminary Site Report.

Then there was a meeting August 8, 1973, by the Site Selection Committee when they spoke of Sites 3, 5 and 6, and ultimately recommended Site 5, with Site 6 as a back-up.

Then I show you Defendants' Exhibit 40, which is a letter from Mr. S. J. Hughes, and he is the EEO specialist that was on your Site Selection Committee, is that correct?

A That's correct.

Q And this was concerning the Equal Employment Opportunities study with regard to those particular sites, is that correct?

A That is correct, with one additional site here, which is the Urban Development Corporation site listed down at the bottom, which was a site at the corner of Lee and

Lexington Road, as I mentioned in my previous testimony, which was owned by the New York State Urban Redevelopment.

MR. HOULIHAN: That is all the questions I have.

CROSS EXAMINATION

BY MR. DIGNAN:

Q Mr. Beers, do I understand that you are presently employed by the Postal Service?

A That's correct.

Q During the time that you did this so-called Site Selection study, you were employed by the Army Corps of Engineers, is that correct?

A That is correct, for the work of Postal Service. My work area did not change. It was only something that was an agreement between the Postal Service and the Corps of Engineers for their work to be contracted to the Corps of Engineers, and then I was brought back to the Postal Service. That was the period from July 1 of '71 that I went with the Corps of Engineers, and on July 1, '73, I was brought back into the Postal Service, as I had been a former Post Office Department employee prior to being assigned -- and believe me, this was a mass transfer. This was not a change of individuals

* * * * *

A No, sir, I was not involved in that at all.

I would like to elaborate and say that I was not involved with the Assessment, but I was personally -- I did have connections with them only to the point of, for instance, certain things that might involve the perimeter survey of the property but nothing to do with environmental assessment and its state.

Q Other than the Assessor in the City of Rochester and Mr. Van de Vate, who was with UDC, have you ever met any officials with the City of Rochester?

A No, sir, I do not believe I had the pleasure.

Q Other than the Planning Board in the Town of Brighton, have you ever appeared before any other Planning Board or with any other agency with respect to this property during the time of your connection with it?

A Only with the Board of the Town of Henrietta, and this was prior to the purchase of the property, and after the purchase of the property, in fact, again to work with people from Headquarters and Region of the U. S. Postal Service.

Q Do I understand you remained on the Postal Service's payroll and were assigned to the Corps of Engineers, is that my understanding?

A No, sir. I was assigned to the Corps of Engineers and received my pay from the Corps of Engineers on an agreement between the Postal Service and the Corps of Engineers on a contract, I believe, and this is the way it was presented to me, and this was a mass transfer of everyone. This was not just myself.

MR. DIGNAN: I have no further questions at this time, Your Honor.

MR. HOULIHAN: I have no further questions.

(Witness excused.)

W I L L I A M F. U S H E R,

called as a witness by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Usher, by whom are you employed?

A The United States Postal Service.

Q And how long have you been employed by the Postal Service?

A Since April of 1974.

Q And in what capacity are you employed by them?

A My job title is Regional Area Construction Manager of the Eastern Region of the United States, which encompasses

Excerpts from Transcript of Testimony.
William F. Usher for Defendants, Direct by Mr. Houlihan.

some seven states, or parts of seven states.

Q What did you do prior to that time?

A I worked for the Corps of Engineers.

Q And how long did you work for them?

A Sixteen years.

Q And what were your duties with the Corps of Engineers?

A I started with the Corps of Engineers upon graduation from college, in a training program, and achieved progressively more responsible jobs. I was Resident Engineer on a major project in Warren County, Pennsylvania. I was a Manager of a Design Team in the Pittsburgh District of the Corps of Engineers before coming down to Washington.

Q And then you went with the Postal Service, is that correct?

A Yes.

Q What are your responsibilities as Construction Manager for this District?

A Upon completion of the planning function that Mr. Chapp is responsible for, we enter into an architect-engineer contract, and subsequent to that, a construction contract on a project, and I am responsible for management of those functions as the contracting officer's authorized representative.

Q Do you have any responsibilities with regard to the Assess-

ment of Environmental Impact of a proposed facility?

A Yes, I do.

Q And was it you that made the negative determination in connection with this particular facility in the construction here?

A No, sir.

Q Who made that determination?

A It was made by The Cannon Partnership, the AE firm, architect-engineer firm that was under contract to us.

Q You are talking about the Environmental Assessment, aren't you?

A Yes.

Q That is Plaintiffs' Exhibit 4?

A I don't know what Exhibit number it is.

(Pause in the proceedings.)

Q I show you Plaintiffs' Exhibit 4 marked in evidence, and that is what you are talking about, right, the Environmental Assessment that was prepared by The Cannon Partnership?

A Yes, I am.

Q Subsequent to the preparation of that Assessment, did you have responsibilities to determine whether or not there would be a significant impact on the environment?

A Yes, I did.

Q And what was your finding?

A That the construction of the project would not have an adverse effect on the environment.

MR. HOULIHAN: Would you mark these for identification?

(Defendants' Exhibits 48 and 49 marked for identification.)

Q I show you Defendants' Exhibit 48 marked for identification, a letter from James J. Wilson. What is that relative to? Is that part of your file? Is that a letter mailed to you?

A Yes, sir.

Q And what is the date of that?

A October 30, 1974.

Q And I show you Plaintiffs' Exhibit 49 marked for identification, and what is that?

A These are comments from two parties relative to the Environmental Assessment.

Q What is the date of that correspondence?

A October 21st, 1974.

Q And that is a letter from you, is that right?

A No, sir -- it is to me. These are to me.

Q The letter that is on the front is a letter from you, and the attachments were forwarded to you?

A Comments to me, right. The letter on the front is a letter from me to the Office of General Council, in which Mr. Wilson responded in the first letter you showed me, Mr. Houlihan.

MR. HOULIHAN: I offer D-48 and D-49 in evidence.

MR. DIGNAN: I have no objection.

(Defendants' Exhibits 48 and 49 marked in evidence.)

Q Referring to the attachments of Defendants' Exhibit 49, these were comments that were forwarded to you by people who had evaluated the Assessment prepared by The Cannon Partnership, is that right, sir?

A Yes, sir. The Assessment came to me, and I shipped it out to all the parties that were responsible for reviewing it.

Q And these were the comments that came back?

A And these were the comments that came back, right.

Q Referring to the second page here, the second page of the first attachment, it reads next to No. 35: "Environmental Impact Assessment was geared to physical environment only;

not economical or political." Is that correct?

A Yes.

Q And in another communication from Mr. J. P. Tice, General Manager, Environmental Services Division, Employee Relations Department, he made his review of the Assessment and had certain criticisms, did he not?

A Yes, he did.

Q And he had two particular criticisms; one, the impact on the community, and it reads: "The planned facility is a potential source of irritation to the community because of the changes it will introduce in terms of (a) vehicular traffic, operational and employee; (b) noise; and (c) illumination of a previously dark area."

Now with regard to traffic, were you aware at the time you reviewed this Assessment that the Sectional Center Facility was located almost adjacent to the new property?

A Yes, I was.

Q And were you aware also that the vehicles and traffic that proceeded to the Sectional Center Facility were the same vehicles and traffic that would proceed to the new facility?

MR. DIGNAN: Your Honor, I'm

going to object to that.

THE COURT: Objection is overruled.

We have been over this before.

THE WITNESS: Yes.

Q You were aware at the time you made your determination that the property on which the Post Office was to be constructed was zoned "Industrial"?

A Yes, I was.

Q And you were aware from the Assessment, were you not, that it was buffered from any residential areas?

A I'm not sure that it is buffered. I know there is a residential area up behind the property. I'm not sure to what extent it is buffered.

Q Now the second criticism of the Environmental Assessment prepared by The Cannon Partnership was the impact on Postal employees, and Mr. Tice pointed out: "This report leaves the reader with the impression that the project site was selected primarily on the basis of operational considerations and soil conditions; and with little regard to the impact on our present employees. Whether or not that is true, it is important that all future steps in the process of planning, designing and activating this facility include provisions for minimizing any adverse

effect of the move to this site upon employees, especially minority and female employees."

Were you aware of those criticisms before you made your negative determination?

A Yes, sir.

Q Do you think that those are valid considerations?

A Those considerations had already been covered in the EEO report prior to the Environmental Assessment.

Q So you think they are valid, but they had already been covered in the EEO report?

A They are innuendo, and those potential problems had already been addressed and reconciled favorably.

Q And in what manner?

A My communication between the EEO people, the Postmaster, the District Manager here in Rochester -- by all those concerned.

Q Essentially, everything that Mr. Chapp testified to this morning you were aware of before you made your negative determination?

A Indeed, and I was involved with the project, I think, probably a little bit before Mr. Chapp.

Q On the basis of the Environmental Impact Assessment that was prepared by The Cannon Partnership and the terms that

were put into evidence through the testimony of Mr. Chapp, you made the determination that there was no need to file an Environmental Impact Statement, is that correct?

A That's correct.

Mr. Houlihan, can I elaborate for just a second?

Q Certainly.

A This Environmental Assessment is not a one-shot deal. It is an ongoing program. It starts at the very beginning of recognizing that we need a project and continues throughout the project and even through construction. It is ongoing right now today.

Q And you mean there is environmental considerations going on today in the construction?

A Absolutely.

Q In what manner?

A We require the construction contractor to file with us a program for protection of the environment during construction.

Q And what kinds of things does that take into consideration?

A He has to address how he is going to keep the stream up there from being polluted, how he is going to prevent mud from getting on the highway, and all the other things that are "site specific" to that program. Each project

is different. Now here we have a stream, and some place else we might have a different kind of a problem. We may be down at the ocean on another job, and we have to address those things that are essential to making sure that they don't affect the environment. The concrete trucks have to get cleaned out after they come on the job, after they dump their concrete. We want to make sure that it doesn't get into the stream or out onto the highways. Periodically, you have to clean the oil filters on the bulldozers. We want to make sure that oil doesn't get spilled on the ground and get into the tributaries of the streams or into the water systems or whatever; that we require the contractors to file with us a plan of how they are going to make sure these things don't happen, and that plan has to be consistent with environmental assessment that you see there, the document that you have just shown me right here (indicating), along with other things that might occur to us as time progresses.

Q Now Defendants' Exhibit 49 is a letter to the Office of General Council, which reads: "Gentlemen: I concur in the finding of this Environmental Impact Assessment that the Environmental Impact Statement is not required. Your agreement with this conclusion would finalize this action.

Attached are the only comments received from Review Elements of this office."

And that is signed by you?

A Yes.

Q And in return you received the letter, Defendants' Exhibit 48 in evidence?

A Yes, from Mr. Wilson.

Q And he is with Regional Council?

A No.

Q Excuse me -- or General Council?

A He is in Washington.

Q And what did he say?

A (Reading): "The decision that no Environmental Impact Statement is required is a judgmental conclusion. On the basis of the study presented, there appears to be no reason to find that the decision is arbitrary."

Q Now subsequent to that approval, was it your responsibility, then, to let the contract out for construction?

A Yes, it was.

Q And how did you go about letting out contracts for construction?

A We advertise initially in the Commerce Business Daily approximately three weeks prior to when the plans and

specifications will be available for bidders. Three weeks hence plans and specifications become available, and normally, on a contract of this size, we allow four weeks for the advertising period, and that is four weeks for the construction contractors to prepare their bids. We receive bids, and it takes us about anywhere from two to three weeks normal time to analyze the bids and find out if they are responsive, if they have their bonding, and all the other things that are required of the construction contractor, and generally, then we award to the low bidder, low responsible bidder.

Q The plans and specifications upon which the contractors bid were prepared by whom?

A The Cannon Partnership.

Q And did there come a time that you let the contract for the construction of the new mail facility?

A Yes.

MR. HOULIHAN: Would you mark this for identification?

(Defendants' Exhibit 50 marked for identification.)

Q Do you know approximately when that was?

A July 31st, 1975.

Excerpts from Transcript of Testimony.
William F. Usher for Defendants, Direct by Mr. Houlihan.

Q I show you Defendants' Exhibit 50 marked for identification and that appears to be a "News Release," announcing the letting of that contract, is that correct?

A Yes.

Q What was the amount of that contract, and who did it go to?

A $12,195,000 to LeCesse Brothers, Inc., of Rochester.

Q And that meant at that point that the government was committed to pay twelve million dollars, in excess of twelve million dollars, for construction?

MR. DIGNAN: Objection, Your Honor.

THE COURT: What is the objection?

THE WITNESS: It didn't mean that.

THE COURT: What is the objection?

MR. DIGNAN: The objection, Your Honor, is at that time the Government was committed to spend twelve million dollars. It calls for a conclusion, Your Honor, and which is not in evidence here as to what document we are talking about. He has got a News Report.

THE COURT: Objection is overruled.

THE WITNESS: I will answer the

question if you would like me to, Mr. Houlihan.

MR. HOULIHAN: Okay. Go ahead.

A The contract was awarded to LeCesse Brothers in the amount of $12,195, to do a job. There are provisions in the contract, of course, to terminate, so we weren't obligated, contractually, to $12,195,000.

Q So you could have terminated, then, in August?

A Indeed, absolutely.

Q If someone had come to you and said, "Terminate," you could have terminated?

A That's right.

THE COURT: What do you mean by "someone"? I'm sure if I went there, they wouldn't terminate it.

MR. HOULIHAN: Well, maybe by order, Your Honor.

Q The letting of the contract was made public by reason of this News Release, is that correct?

A Among other things, yes.

MR. HOULIHAN: I offer D-50, Your Honor.

MR. DIGNAN: May I see it, please?

(Defendants' Exhibit 50 handed to Mr. Dignan.)

MR. DIGNAN: I have just one question on voir dire. The date on this release is what, Mr. Usher?

THE WITNESS: 8-6-75, I guess.

THE COURT: What is it?

MR. DIGNAN: 8-6-75.

Your Honor, I have no objection.

THE COURT: What was the date of the award?

THE WITNESS: July 31st, Your Honor.

THE COURT: What is the discrepancy between the News Release and the --

MR. HOULIHAN: This was eight days after.

THE COURT: I know it was, but why if they awarded it on July 31st, how come the public doesn't know about it until eight days later? There may be a good reason, but I don't know it.

MR. HOULIHAN: I don't know the

Excerpts from Transcript of Testimony,
William F. Usher for Defendants, Direct by Mr. Houlihan.

reason.

Do you know the reason?

A I do know.

Q What is the reason?

A We give the Congressmen in the area the opportunity to make the announcement before we do.

THE COURT: Now that is a good reason.

THE WITNESS: That is the reason.

(Defendants' Exhibit 50 marked in evidence.)

THE COURT: Now this News Release, that is just something you hand to the media, isn't it, to the newspapers?

A The Commerce Business Daily, the Blue Reports, the trade journals, that kind of thing, yes.

THE COURT: Now they could either print it or not print it if they want to?

A That's correct.

THE COURT: It seems to me the important thing is when they did print it, not when they could.

MR. HOULIHAN: I believe that is

already in evidence, Your Honor.

Q If a contract is terminated for convenience of the Government, does it cost the Government anything to do that?

A It certainly does.

THE COURT: What do you mean "for convenience of the Government"? There is some provision in the specifications, I suppose?

A Yes, Your Honor, but for the convenience of the Government, for instance, means -- and I am not sure that this has happened very recently -- but during the Second World War, a lot of construction contracts were terminated because of the war, for convenience of the Government, lock and dam projects, flood control projects, and they cost the Government a great deal of money.

THE COURT: That is an entirely different situation.

THE WITNESS: That is just the situation --

THE COURT: The convenience, then, was satisfied because there was a war on.

A If Congress should suddenly take away Postal Service funds for the convenience of the Postal Service, we would have

to terminate some ongoing projects.

Q If this Court would order the termination of construction out in Henrietta, would that also terminate the construction of that building?

A It certainly would.

THE COURT: I'm sure I couldn't order it without some good basis.

Q Do you know when construction started on that site?

A Shortly after July 1st.

THE COURT: Before the public knew about it?

A I can't say for certain, Your Honor. I suspect not. It would normally take a contractor about two weeks to get mobilized, and actually appear on the site with equipment and trailers and things like that. So I think that the notice was timely, as far as that is concerned.

MR. DIGNAN: Your Honor, I object to that. That is all speculation.

THE COURT: Strike it out.

Q I show you Plaintiffs' Exhibit 47 in evidence, which appears to be the Times Union article dated August 7, 1975, and is that the announcement printed in the newspaper of the letting of the contract?

A Yes, it is.

THE COURT: That was the day before the "News Release"?

MR. HOULIHAN: No. It is a day after the News Release, Your Honor.

THE COURT: August 7th?

MR. HOULIHAN: Yes.

THE COURT: I think the News Release was dated August 8th.

THE WITNESS: Excuse me, Your Honor. That was 8-6 was the date.

THE COURT: 8-6 was the date?

THE WITNESS: Yes, Your Honor.

Q Now prior to actual construction, there has to be site preparation, is that right?

A That is part of construction.

THE COURT: I'm going to interrupt here. There is no way possible to finish this witness tonight, I take it.

Are you from out of town?

A I am prepared to stay another day, Your Honor.

THE COURT: All right. We will adjourn until tomorrow morning at ten o'clock.

Excerpts from Transcript of Testimony.
William F. Usher for Defendants, Direct by Mr. Houlihan.

Rochester, New York

Friday, February 27, 1976

10:00 A.M.

- - -

MR. HOULIHAN: Would you mark this for identification?

(Defendants' Exhibit 51 marked for identification.)

W I L L I A M F. U S H E R,

called as a witness by the Defendants, being previously duly sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Usher, I show you Defendants' Exhibit 51 marked for identification, which appears to be a layout plan of the proposed facility. Is that accurate?

A That is a Site Utilization Plan, yes.

Q What is the date of that?

A April 12, 1974.

Q Now what is this property a portion of in terms of Post Office documents prepared for this facility?

A It is part of the fuctional design specification that is given to the Architect-Engineer firm for development and

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design of the project.

Q And you were here yesterday when Mr. Chapp was testifying?

A Yes.

Q And this is a document that was missing from the Functional Design Specification, is that right?

A That is true.

MR. HOULIHAN: I offer D-51.

MR. DIGNAN: What Exhibit is the Functional Design Specifications?

THE COURT: April 12, 1974.

MR. DIGNAN: I've got the date, but I want to know what the reference was to the Functional Design Specifications.

MR. HOULIHAN: The Functional Design Specifications is marked as Defendants' Exhibit 41.

(Defendants' Exhibit 41 handed to Mr. Dignan.)

MR. DIGNAN: I have no objection.

(Defendants' Exhibit 51 marked in evidence.)

Q Now, Mr. Usher, your specific responsibilities subsequent to the letting of the contract is to oversee construction,

is that correct?

A Yes, sir.

Q And as part of your duties to oversee construction, do you get photographs periodically from the architectural-engineering firm that is overseeing construction as well?

A From the general contractor.

Q The general contractor?

A Yes.

MR. HOULIHAN: Would you mark these for identification?

(Defendants' Exhibits 52 through 57 marked for identification.)

Q I show you Defendants' Exhibits 52 through 57 marked for identification. Are those photographs that were submitted to you by the general contractor preparing the site and in building the faci ity out in Henrietta?

A They are.

Q What are the dates that those photographs were taken?

A January 15, 1976.

Q And this was approximately two days after the lawsuit was filed in this case?

A Yes, sir.

Q And do they represent the condition of the construction

as it was on that day?

A Yes, sir.

MR. HOULIHAN: I offer Defendants' Exhibits 52 through 57, Your Honor.

MR. DIGNAN: They were all taken on the same day, to the best of your knowledge, Mr. Usher?

A. Yes, indeed.

MR. DIGNAN: Any photographs prior to that time?

A Yes, sir.

MR. DIGNAN: Do you have them with you?

THE COURT: Just a moment. That isn't the question. The question is as to these photographs and not on some others.

THE WITNESS: Every thirty days we take photographs of the site to ascertain progress in the same locations. I have a file of those photographs back in Washington.

MR. DIGNAN: I have no objection,

Your Honor, insofar as they pertain to the date they are on, January 16, 1976.

THE COURT: They are received in evidence with that qualification.

(Defendants' Exhibits 52 through 57 marked in evidence.)

Q Specifically with reference to D-57 marked in evidence, what does that show?

A That shows the status of construction of the General Mail Facility. Specifically, it shows the completed erection of the steel.

Q And is that completed at that point, the steel construction?

A Yes, sir.

Q Now you are aware of the contract provisions with LeCesse Brothers with regard to terminating the contract, is that correct?

A Yes, sir.

Q And you are familiar with the progress of construction as of January 15, 1976?

A Yes.

Q And you are aware of the costs that had been incurred up to that point, is that correct, in the construction?

A To the extent that I am aware of the cost, at that point

in time, to the extent that we have been billed those costs.

Q On the basis of your knowledge, can you tell this Court what it would cost to terminate, to stop construction, on January 15, 1976?

A Yes.

Q And what is that cost?

A Approximately eight million dollars.

Q And this includes not only money that had already been --

THE COURT: Let him tell what it includes.

Q What does this include?

A It includes the cost that we have already paid for design, which is about $800,000. It includes the cost that we have already paid for construction, which is approximately $2,000,000. It includes the cost that I would anticipate that would be claimed for and in reaching an equitable adjustment with the contractor which would be paid by the Postal Service in terminating the contract.

Q Does that $8,000,000 include the cost of acquisition of the land?

A No.

MR. HOULIHAN: Would you mark

these for identification?

(Defendants' Exhibits 58 through 61 marked for identification.)

Q I show you Defendants' Exhibit 58, 59, 60 and 61 marked for identification. Are these photographs that were submitted to you by the general contractor in connection with the construction of this facility?

A Yes, they were.

Q And were those submitted by the general contractor?

A They were submitted by the general contractor, yes.

Q And what is the date of those?

A The date is February 16, 1976.

Q And do they fairly represent the condition of the building as of that day?

A Yes, sir.

MR. HOULIHAN: I offer Defendants' Exhibits 58 through 61.

MR. DIGNAN: No objection, but with the same reservation, Your Honor.

THE COURT: It is received without qualification.

(Defendants' Exhibits 58 through 61 marked in evidence.)

Excerpts from Transcript of Testimony.
William F. Usher for Defendants, Direct by Mr. Houlihan.

Q I call your attention again to D-57 in evidence which you described as the completed steel structure of the General Mail Facility. In order to complete that construction that far, all of the footers and foundations would have to be put in, is that correct?

A Yes.

Q I show you D-56 marked in evidence. Can you tell me just what that is?

THE COURT: I know what it is.

It is one of the pictures.

Q Is that just another view of the General Mail Facility?

A It is a general view of the site showing the structure that we just looked at a moment ago, plus the trailers that are occupied by our Resident Engineer and the contractor, showing some construction equipment around the site.

I might add, Mr. Houlihan, that these pictures, the six pictures that we get every month, the locations of those pictures have been predetermined by the Government and the contractor to best portray the status of the structure every month, and they are all taken of the same location every month.

Q Prior to the actual construction, did you have a meeting

with any officials from the Town of Henrietta or any other Board?

A Yes, sir.

Q Do you recall when this meeting took place?

A I believe it was in November of 1975.

Q How many people were at that meeting, as you recall?

A In addition to myself, Mr. Beers was there, Mr. Dave Eberl, representing The Cannon Partnership, and Mr. Oakes, who was then the City Manager, I believe is what they call him over there.

Q The Town Supervisor for the Town of Henrietta?

A Yes, the Town Supervisor for the Town of Henrietta, his Town Engineer, a representative of the State of New York Department of Transportation, and several other of the Town Supervisors.

THE COURT: Of the Town of Henrietta?

A Yes, sir.

Q Did you have any discussions at the time of that meeting regarding the proposed construction of the facility?

A That was the purpose of the meeting.

Q And were there any concerns brought up by the Town of Henrietta at that time?

A There were indeed.

Q What were those?

A Mainly, the quality of the road that runs beside the site--

Q -- Saginaw Drive?

A Saginaw Drive. They were concerned that the heavy traffic that would be imposed upon that road by the incidence of the Postal Service mail-carrying trucks would damage that road and cause them considerable problems, maintenance cost and so on, and upgrading the road and repairing it.

Q Now this is a road maintained by the Town of Henrietta, is it not?

A Yes.

Q And what, if anything, did the Postal Service do to alleviate that fear?

A At this meeting with Mr. Oakes I agreed on the part of the Postal Service to upgrade the road, beginning at Henrietta Avenue, and extending on up Saginaw Drive approximately eight hundred feet, as I recall it, to upgrade the road to new standards that would permit the Postal Service traffic to travel on it without causing the Village any additional maintenance.

Q Were there any other concerns at that time?

A Yes, sir, there were. The State of New York was concerned

about us having to make turns off Henrietta Avenue. I also agreed at that time to modify, at Postal Service expense, Henrietta Avenue, insofar as the median strip was concerned, so we could make these left-hand turns.

There was also a consideration, then, of whether or not we needed a traffic light. The recommendation on the part of the New York State Department of Transportation at that time was to postpone consideration of a traffic light until they were able to ascertain whether or not we were going to impact the traffic to the extent that a traffic light was required.

There was also discussion on the part of Mr. Oakes as to whether we would maintain this little piece of road that I was upgrading, and I told him at that time that we would not maintain it, that we would not be responsible for snow removal. They were already receiving tax dollars from the Federal Government to maintain that road, and that we were not going to accept that responsibility.

Q And he agreed to this?

A I'm not sure that he agreed to it. As a matter of fact, I don't think he did agree to it.

Q But you did agree to upgrade the road, but you didn't

agree to remove snow from that because --

THE COURT: And maintain it.

There was more than snow removal. You maintained it?

A To maintain it and snow removal, yes, Your Honor.

Q The basis for this refusal was that they already received Federal funds, as I understand it, to maintain and remove snow from there?

A That's correct, partially. The other consideration is that this road will be used not only by the Postal Service but it is indeed used by X-number of firms already --

THE COURT: It is a regular Town road?

A It is a Town road, Your Honor, being used now by other occupants of the industrial area.

Q Now this would include the Xerox Corporation, the Cycle Manufacturing -- all those firms?

A There is a moving company there, several other firms. I don't know the names of all of them.

THE COURT: The regular Town road will be used by the general public?

A Yes, Your Honor.

Q Now you mentioned Henrietta Road -- you are not from

Rochester, are you?

A No, sir.

Q Could you have been referring to Jefferson Road, because the facility is on the corner of Jefferson Road and Saginaw Drive?

A Yes, right.

Q So it is Jefferson Road?

A Yes. Henrietta Road is another one of my projects in Syracuse. My apologies.

MR. HOULIHAN: That is all the questions I have at this time.

CROSS EXAMINATION

BY MR. DIGNAN:

Q Do I understand that your first connection with this project, the facility being built in Henrietta, was April, '74?

A Yes, sir.

Q What, if any, connection did you have with the Postal Service prior to that date?

A None.

Q Were you with the Corps of Army Engineers, is that correct?

A Yes, sir.

Q And you had no contact while you were with the Corps of

* * * * *

Q So you didn't review these documents when you took over in April of '74, is that what you are saying?

A That is correct. I deal with perhaps around seventy-five people that report to me or discuss things with me, and I don't bother trying to document everything I get.

Q You are very busy, aren't you?

A I sure am.

Q A lot of projects are under way, sixteen, is that correct?

A Seventeen.

Q Seventeen projects?

A Yes.

Q You have to file Assessments with those and consider those, too, don't you?

A Absolutely.

Q Did you take into consideration any other concerns with respect to the City of Rochester other than those that you just described?

A Not that I recall.

THE COURT: Particularly, what have you got in mind?

MR. DIGNAN: Particularly, Your Honor, the effect upon the City of Rochester of this move to the facilities in Henrietta.

Excerpts from Transcript of Testimony.
William F. Usher for Defendants, Cross by Mr. Dignan.

THE COURT: The effect in what respect?

MR. DIGNAN: The effect in respect to the possibility of blighting, loss of employment to individuals in the City, and the general effect on the retail merchants in the area located near Cumberland Street.

THE WITNESS: Mr. Dignan, as part of our consideration in our EEO studies of this project and our past experience, and we have been building Post Offices now since Benjamin Franklin started, we know damn well -- excuse me, Your Honor -- we know that people aren't going to relocate for seven miles. Because of a relocation in job location of seven miles, people don't move their homes. Wherever they live now, they are going to continue to live. Where they shop now, they will continue to shop.

Q Did you make those studies to determine that?

A I had that input to me.

* * * * *

REDIRECT EXAMINATION

BY MR. HOULIHAN:

Q When you made your determination that there was no significant impact on the human environment, did you take into consideration all of the documents that were prepared in connection with this facility?

MR. DIGNAN: Objection, Your Honor. He just answered the question that --

THE COURT: Objection is overruled.

Q You may answer the question.

A I don't know if I took into consideration all the documents or not, Mr. Houlihan. I took into consideration those documents that were available to me.

Q And those documents include your knowledge of Postal regulations of what is conducted in connection with the Postal construction?

A Yes.

Q And were you aware at the time that you made your negative determination that there were EEO studies completed, that there were site studies completed?

A Yes.

Q Were you aware that alternatives to the construction of the

facility in Henrietta were considered by the Post Office?

A Yes.

Q Were you aware of the Functional Design Specifications, the design of the building were considered by the Post Office?

A Yes.

Q Were you aware that traffic congestion, lighting and noise were considered by the Postal Service prior to construction?

A Yes.

Q What do you do about lighting, for example?

A You make sure that the lights are erected in the fashion where they shine onto the property as opposed to shining onto the surrounding community.

Q And that is because it is to eliminate this light annoyance to anyone else?

A That's correct.

Q And that is in the design, is that right?

A That is the way the building is being constructed.

Q And did you know at the time you made the determination that this property was zoned "Industrial"?

A Absolutely.

Q When you negotiated the contract with Cannon Associates to

prepare the Environmental Assessment, that was negotiated from a proposal price of some sixteen or seventeen thousand dollars down to thirty-five hundred dollars. Was there any change with regard to the specifications that they had to meet?

A None whatsoever. I think that in looking back upon it, Cannon thought that what we were asking for was an Impact Statement, and that initial price envisioned that scope of work as opposed to Environmental Assessment, which is certainly a lot smaller scope of work.

Q And there was no need for Cannon Associates to consider alternate locations. Why?

A Because they had already been considered. We did that.

Q Now prior to the start date of November 4th, 1975, with regard to structural steel, what do you have to do before you can put structural steel up?

A Build the foundations, footers.

Q You have to rearrange the layout of the property, don't you?

A You have to do the site work, the clearing, and do the excavation, place the foundations, and then you start up with your columns and your other steel.

Q So the fact that the steel started on November 4th, 1975,

has nothing to do with when the actual construction on the site started, did it?

A No.

Q Only the steel construction on that site?

A That's right.

Q Does the contract with the general contractor include a "Liquidated Damages Clause" with regard to a per day cost, if construction is delayed by reason of the Postal Service action?

A Well, the Liquidated Damages Clause is a penalty clause --

THE COURT: There is a Liquidated Damages Clause in the contract?

A Yes. I just want to qualify what Mr. Houlihan said, Your Honor. It is not because of Postal Service delays. It is because of contractor delays that it is normally assessed.

Q This would be assessed against the contractor?

A That's correct.

Q What would it cost the Post Office if they had to delay the contract?

A Well, the liquidated damages in the contract are $2,500 a day, and that number is developed through a process of determining how much it would cost us for each day we

can't occupy the new facility. That is the basis of the number.

Q When is this construction going to be completed?

A May of 1977.

Q And that's the target date, is it not?

A That's correct. That is the contract date.

Q Now that means that you can't occupy the building prior to that date, is that right?

A Generally, that is true, and in some cases, we take beneficial occupancy of parts of the building prior to the total project completion.

MR. HOULIHAN: I have no further questions.

RECROSS EXAMINATION

BY MR. DIGNAN:

Q Do I understand that you are testifying now, Mr. Usher, that you believe that Cannon thought that they were initially supposed to file an Environmental Impact Statement?

A I'm suggesting I think that is what the problem was.

Q I'm not asking what you are suggesting. I'm asking what you know, Mr. Usher.

A I don't know.

* * * * *

among counsel.

I have no further questions of this witness.

THE COURT: Are you through with this witness?

MR. DIGNAN: Yes, Your Honor.

(Witness excused.)

W I L L I A M E. F I N N,

called as a witness by the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Finn, by whom are you employed?

A U. S. Postal Service.

Q How long have you worked for the Postal Service?

A Since October, 1946.

Q And have you always worked in Rochester, New York?

A Always in Rochester.

Q What is your position now?

A Postmaster, Sectional Center Manager, Rochester, New York.

Q How long have you been Postmaster and Sectional Center Manager?

A I went in the position as Acting Postmaster December 29,

1969, and I got my commission in February of '71.

Q And prior to that time what position did you hold?

A General Superintendent of Mails, Assistant General Superintendent of Mails, Superintendent of Delivery and Collection, Tour Superintendent, Foreman of Mails.

Q What is the area of your responsibility in terms of the State of New York?

A I have jurisdiction, Postal Service-wise, over about ten counties, or parts of ten counties, and one hundred and twenty-eight associate offices in the immediate vicinity of Rochester, New York.

Q I call your attention to Defendants' Exhibit 27, and there is a green line that is drawn around on this Defendants' Exhibit 27. Would that be the area that is within your jurisdiction?

A Yes, it would.

MR. HOULIHAN: I don't see that D-27 is in evidence, Your Honor. I would like to move it in evidence.

THE COURT: All right. It is received.

(Defendants' Exhibit 27 marked in evidence.)

Q How long have you worked in the Main Post Office on Cumberland Street?

A During my whole incumbency as a Postal employee in Rochester New York.

Q And during that period of time, have you been asked from time to time to assess the conditions at that facility?

A Yes.

Q And did there come a time that a determination was made that the facilities were inadequate to handle the Postal needs for this area?

A Yes.

Q And do you recall when this was made?

A Yes. Before I took over my present position, as far back as 1965, a new facility was under active consideration. When I went in at the end of '69, the case was laying more or less dormant, and I believe in August of 1970, I submitted a reactivation of consideration of a new facility to the New York Region.

Q On what basis did you submit this request?

A For many reasons -- the inadequate working conditions, the conditions that employees were required to work under. There were no parking facilities. We were starting to bring in electronic equipment, and there was no air con-

ditioning. There wasn't the proper overall sanitary facilities for the number of employees we had to hire. This building was no longer conducive to a proper mail flow. It was on two floors. We were having the potential of letter-sorting machines, automatic mail marking up the equipment, which the Rochester facility on Cumberland Street just didn't have the room for, and when we did move it in, we didn't have room enough for the large number that were required according to the volume and the increasing volume trend.

Q Now in 1968 the Post Office made at least some movement out of that building, is that correct?

A There was strong consideration at that time in going to a location in the area of Lyell and Mt. Read.

Q And was a decision made to move there?

A It didn't quite get to the point of a decision. They came very close to it, but I came up with a negative response.

Q Were there any other properties under consideration at that time?

A I believe so, but since I wasn't the installation head at that time, I can't speak authoritatively on it. But I do know that was the one under most active consideration.

Q Were you aware of consideration of the possible relocation

to the General Dynamics building?

A Yes, very much so.

Q And was that facility inspected by the Postal Service, and was there a report done on that?

A Yes, it was, and there was a report done on it.

Q I show you Defendants' Exhibit 30 in evidence. Is this the report regarding the General Dynamics building?

A I believe so.

Q And was there a decision made at some time not to relocate in the General Dynamics Building?

A Yes, there was.

Q Do you know what the reasons were for that decision?

A As I recall, there were two main reasons; one was that the facility, or the building, was under active consideration by the Board of Education, and I believe we didn't want to get into the position of one government agency competing against another for the same facility; and two, the General Dynamics building had a square footage of around 800,000, much too great for our needs.

Q I show you Defendants' Exhibit 33 marked in evidence, which is a letter dated May 10, 1971, from Paul Reason of the City School District to Henry Lehne, Assistant Postmaster General, with a carbon copy to William Finn.

Was that taken from your files?

A Yes, it was.

Q And I show you Defendants' Exhibit 32 marked for identification, which is a letter from the Executive Assistant to the Postmaster General to Congressman Conable, and the date of this is June 7, 1971.

Was this document taken from your files?

A Yes, it was.

Q And both of these documents have to do with the General Dynamics plant, is that correct?

A They both do.

MR. HOULIHAN: I move Defendants' Exhibits 32 and 33 into evidence.

MR. DIGNAN: I have just one question on voir dire, Mr. Finn.

Exhibit D-32, is that from your files, the letter from Mr. Powell to Congressman Conable?

THE WITNESS: The copy is from my file. It is merely a copy, and the copy is from my file.

Q And these documents substantiate your knowledge of the Rochester City School District interest in the General

Dynamics building?

MR. DIGNAN: Objection, Your Honor. The documents speak for themselves.

THE COURT: Objection is overruled.

(Defendants' Exhibits 32 and 33 marked in evidence.)

Q These documents confirm what you have just testified to, the interest of the City of Rochester School District in the General Dynamics building and the decision by the United States Post Office to discontinue interest in that building, is that correct?

A I would think they do.

Q Was consideration made by the Postal Service to rehabilitating the present facility at Cumberland Street?

A Yes, it was.

Q And was that considered feasible?

A No, it wasn't.

Q What was the principal objection?

A There were many objections; one was the volume trend continually going up; two, there wasn't sufficient space to accommodate the machinery that we were expecting that was coming down the line; three, there was no parking facility for employees, which was getting to be more and more of

an employee labor relations problem continually; four, there was no air conditioning.

There were many other aspects of the operations in which we were hindered. Another big factor was it was necessary for us to go out to Henrietta and get an auxiliary building, and having any operation under two roofs makes it terribly costly, and an operation just isn't that successful.

Q When you moved, when you had to relocate your facilities on Brighton-Henrietta Town Line Road, and this is the Sectional Center Facility, is that correct?

A That's right.

Q When was that move made?

A I believe in 1968.

Q Were you an official at the Post Office in Rochester at that time?

A Yes, I was.

Q And were you aware of the fact of that move?

A Yes, I was.

Q And the Sectional Center Facility is within a mile of the proposed new facility, is that right, sir?

A I believe it is.

Q And do you know how far that is from downtown Rochester?

A Oh, six, seven miles.

Q Did any employees of the Rochester Postal Service quit as a result of this move?

A Definitely not, as I recall.

Q Were there any complaints on the part of any employee with regard to having their jobs transferred to the Sectional Center Facility?

A They were so minimal I do not recall any specifics whatsoever.

Q Prior to that move, did you have any conversation or arrangements with the Rochester Transit System to transport employees out to that facility?

A I didn't, personally, but I do know that arrangements had been made with them. Rochester Transit were most considerate, and they said the only stipulation they wanted for a bus to go there, that naturally, there would be a satisfactory number of passengers. Right to this day, we still have two bus trips going out there, one in the morning and one in the afternoon.

Q Would you say that the largest percentage of your employees go to work by bus or by some other means?

A By some other means.

Q They don't use the bus system, then?

A I would think that the vast majority of them use their own vehicle or a pool with other people.

MR. DIGNAN: I'm going to object to what he thinks, Your Honor.

THE COURT: Objection is overruled. If the Postmaster doesn't know, he ought not to be there.

Q I show you Defendants' Exhibit 39 in evidence, which is the EEO study done April, 1973, and this shows Mode of Transportation, and this is by Zip Code. Are you aware of that document?

A Yes.

Q Does that make a distinction about whether the employees go by bus or drive privately-owned vehicles?

A It certainly does.

Q Would it be fair to say that an insignificant number travel by bus?

MR. DIGNAN: I'm going to object to that, Your Honor.

THE COURT: Objection is overruled.

A I would answer according to the statistic that I have in my hand right now, the large percentage of people drive their own car or are in a car pool.

Excerpts from Transcript of Testimony.
William E. Finn for Defendants, Direct by Mr. Houlihan.

Q I show you Defendants' Exhibit 37 marked in evidence. Are you aware of this document, the WCIP, Working Conditions Improvement Program?

A Yes, I am aware of it.

Q And do you know what this does?

A Yes, I do.

Q And what does it do?

A Well, it is an Environmental Survey Summary, and on the first page, it lists all the deficiencies of the present Rochester Main Post Office.

Q Do you agree with the results of that study?

A I certainly do.

Q Do you agree with the finding on Page 4, next to the last paragraph, "As this facility is listed as interim, we urge that every effort is made to replace it as soon as possible"?

A I certainly do.

Q With regard to the building, the mail facility being constructed now in Henrietta, are you aware of consideration given by the Postal Service to transporting people out to that facility?

A I will have to answer that in two ways--a number of our employees, through their organizations, have mentioned to

me they can't wait until there will be a place to park their cars; and two, our experience with the Rochester Transit, as I mentioned before, has always been most cooperative. Their only natural stipulation is there has to be the passengers before they consider a bus. So I think with those two things, we can answer that question.

Q Have you had any discussions with employees or employee representatives regarding the proposed move out to Henrietta?

MR. DIGNAN: Your Honor, I'm going to object to hearsay.

THE COURT: Objection is overruled.

A The matter of our move to Henrietta has been a matter of subject, I believe, or inquiry, and the unions have been in my office, and as I said before, they are quite anxious about the move, so there will not be this terrible headache of parking, which is almost impossible around our present facility.

Q Have you received any complaints from Postal employees about the move?

A No.

Q How many employees work at the facility downtown?

A Around fourteen hundred.

Excerpts from Transcript of Testimony.
William E. Finn for Defendants, Direct by Mr. Houlihan.

Q And are you aware of the average income of those employees?

A Yes, I am.

Q What is the average income of the lowest-paid employees?

A The lowest paid, which is a custodian, is around $8,700.

Q How about clerks and carriers?

A Their average is $10,400.

Q Is there anyone that makes less than $8,700 employed by the Post Office in Rochester?

A I think that is just about the lowest right there.

Q And these are permanent employees?

Yes. They are permanent employees.

Q Were you aware of the announcement in January of 1974 that the Post Office intended to relocate its main facility?

A Yes, I was.

Q And did you have any information at that time that there was any concern by the City of Rochester?

A Not in January of '74.

Q When did you first receive information on this?

A The only concern I had from the City of Rochester was what I had read in the newspaper, and one time Mr. Sylnovelli of the Chamber of Commerce staff, asked me if I would go over to the Chamber while their City repre-

sentative was there and present the posture of the City in regard to this situation. Later on, I believe, there was some literature in my listing here.

Q Have you read over the news clippings that were in your file?

A Yes, I have.

Q And you are quoted many times in these news clippings. Do you recall any time that you were misquoted with regard to the use of the facility downtown?

A On the subject of the new facility, I don't recall ever being misquoted in the paper.

Q Is it possible under present conditions, not taking into consideration a ten-year plan or twenty-year plan, is it possible under present conditions to handle mail out of the City of Rochester, using only the Post Office branch located in the Federal Building on State Street and the Midtown branch located in Midtown Plaza? Can you handle all the mail just using those two?

A For the downtown area?

Q Right.

A No.

Q So you definitely need a third facility, is that right?

A I would have to qualify that answer. We would need some

facility to handle the whole area. There could be a combination thereof, or if they kept the two facilities now downtown, then we would need a third one. But if we could consolidate possibly some other area, and have a total of two.

Q But it would have to be a bigger facility?

A Absolutely.

Q Do you need a customer service and delivery station at Cumberland Street?

A We definitely do now, definitely.

Q Do you know when the new facility will be completed, the one being constructed in Henrietta?

A Yes. There is a difference between completion date and occupancy date. The occupancy date that we have been given is September, 1977.

Q September of 1977, is that it?

A Yes.

Q We are talking about two years?

A Close to two years.

Q So that means that prior to that time, everything is going to remain right at Cumberland Street?

A Absolutely.

Q Do you know what the Post Office plans are after the

operations and mail processing facilities are moved to Henrietta in the new facility? What is going to be staying at the Main Post Office on Cumberland Street?

A Window service for the customers, all the lockbox arrangements, practically all the carriers that are there now, and possibly a weighing room. When I have been asked this question a number of times by the press, the answer has been that every customer service that is given now to the public downtown, it will still remain.

Q Approximately how much of the building will that occupy?

A Oh, I would think not much more than twenty-five per cent.

Q So the rest of the building will have to be rented out to other agencies or private industry?

A I would think so.

Q Now if the Post Office in September of 1977 moved out a major portion of their operations and retained only twenty-five per cent, would the Post Office only maintain the twenty-five per cent and let the other part of the building deteriorate?

A We couldn't. I mean if a window was broken upstairs and started to leak down on the carriers, I think we would have a lot of trouble, so we would have to maintain, I would think, the whole building.

Excerpts from Transcript of Testimony.
Recess.

Q So even though you would only be using twenty-five per cent of the building, the whole building would be maintained?

A It would have to be.

Q And the area around the building?

A And the area around the building, yes.

THE COURT: We will recess until two o'clock.

(A luncheon recess was taken at 12:40 P.M.)

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Excerpts from Transcript of Testimony.
William E. Finn for Defendants, Direct by Mr. Houlihan.

Rochester, New York

Friday, February 27, 1976

2:00 P.M.

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W I L L I A M E. F I N N,

called as a witness by the Defendants, being previously duly sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Finn, I show you Defendants' Exhibit 29 marked in evidence, which appears to be operations studies of the Main Post Office and then the Sectional Center Facility. Can you tell from that document what the rental is per year of the Sectional Center Facility in Henrietta?

A Yes, I can.

Q What is that?

A $127,893.69 per year.

Q That means that the Sectional Center Facility is not owned by the Post Office, but you pay rent on it?

A That's correct.

Q Now for any reason that the Sectional Center Facility cannot move out of the position it is located, that rent would continue, is that right?

A That is true.

Q Are you aware, Mr. Finn, why the Postal facility, the new facility being constructed in Henrietta, was located south of the City?

A Yes, I am.

Q Would you please tell the Court why that decision was made?

A Yes. We did want a facility that was adjacent as close as possible to the Thruway, also to the Outer Loop, and of course, we couldn't go north of the City because then we wouldn't be as close to the population base, the overall population base, as we are in the south of the City. In the south there is a tremendous growth going on, too, and in our projection for the future, this was taken into consideration.

Q As a matter of fact, the New York State Thruway runs south of the City, is that right?

A That is true.

Q And very near the site of the proposed facility?

A Right, and the Outer Loop also.

Q And the Outer Loop, and there is a proposed construction of the Genesee Expressway out to the area of the new facility, is that right?

A Yes, there is.

Excerpts from Transcript of Testimony.
William E. Finn for Defendants, Direct by Mr. Houlihan.

Q Would you tell the Court what the posture is of the United States Postal Service with regard to the abandonment of the downtown facility?

A The services that we give to the public in the downtown area, we are definitely going to keep up. They are either going to be just as well, if not better. As far as that facility by itself is concerned, immediately for a couple of years, until we are in a position to move into the new facility, we definitely must stay there, and then after that time I would imagine there would have to be quite a bit of planning to be done if we were going to combine any two facilities or to get another one after the September, '77, date.

Q So the facility will remain at the Main Post Office at least until September of '77, and after that for the foreseeable future at this time because you need downtown services, is that right?

A I would say that sums it up quite accurately.

Q Is there a decision now that the facility downtown will be abaondoned?

A There is an ongoing decision continually, and, of course, a decision of that type --

THE COURT: There can't be any

"ongoing decision," because if it is "ongoing," that means there isn't a decision. You mean it is under consideration?

A All I can say is that decision would not be made at my level.

THE COURT: In any event, it hasn't been made up to now?

A Not to my knowledge.

Q And if the Post Office decided to abandon that facility, would they have to go through the same procedures in locating a new facility and doing studies the same way they did with the construction of the new facility in Henrietta?

A It would be extensive planning that would be required, as has been in the situation right now.

MR. HOULIHAN: Thank you. I have no further questions.

CROSS EXAMINATION

BY MR. DIGNAN:

Q Mr. Finn, before they would abandon the building, what would they do?

A Before any building is abandoned, or a new building is

projected, a great deal of planning would have to go into it. As an experience, that is what has gone on in this certain situation right here. There would be planning, and there would be all sorts of things that has been outlined in court the last several days.

Q Mr. Finn, Exhibit 37 is the Working Conditions Improvement Program, November 12, 1973, isn't that correct?

A Yes.

Q After the decision had been made in October of 1973 by the Committee to recommend to the Board of Governors of the Postal Service to erect the new facility in Henrietta, this report came out, which I'm showing you now, Defendants' Exhibit 37, isn't that correct?

A I think that report came out before any contract had been let.

Q I'm not talking about the contract. I'm talking about the decision in 1973. Do you understand when the decision was made to go ahead with the new facility in Henrietta?

A The only way that I could be sure that the decision had actually been made was to know that a contract had been let.

THE COURT: The letting of the contract isn't certainly the first thing?

A No.

THE COURT: There are a great many steps before the letting of the contract.

THE WITNESS: What step are you referring to?

MR. DIGNAN: Your Honor, he has already testified the first time he knew about the decision was when the letting of the contract was, is that correct?

THE WITNESS: The actual decision that I knew that we were going to have a new Post Office is when the contract had been let.

THE COURT: That was the consummation?

THE WITNESS: That is the consummation.

THE COURT: That isn't what he asked you. He didn't ask you when they made the contract for the new building. He asked when the decision to have a new facility in Henrietta was arrived at.

THE WITNESS: I would like to refe to my notes --

THE COURT: If you don't know, that is all right.

THE WITNESS: That decision would be made in Washington.

THE COURT: I know it is, but you are the Postmaster in Rochester. I would presume that it might trickle down to you.

THE WITNESS: The decision to be made, when it was actually made, I do not know by date.

MR. DIGNAN: In Defendants' Exhibit 37, there is --

THE COURT: Now, counsel, you are leaving the record like that, and I know that counsel is going to argue, "Here is the Postmaster in Rochester, and he doesn't know anything about it, so how can anybody else know."

THE WITNESS: Your Honor, I do know quite a bit. I have got it point by point here of the different things

that were taken. The question, as I understood it, it was, "When was the actual decision made?"

I do not know when the actual decision was made. I do know all the steps leading up to it. If that was the question, "When was it made to build the building," I do not know by date.

MR. HOULIHAN: But you know when the request was made?

THE WITNESS: Yes. The request was made --

THE COURT: Just a moment. There can't be two ongoing examinations here.

THE WITNESS: I know when I submitted by request, Your Honor. It was in August of 1970.

Q Mr. Finn, in Defendants' Exhibit 37, there is a figure, total cost of renovating the building, isn't that correct, the Cumberland Street location?

A Yes, Mr. Dignan, there is.

Q What is that figure in there?

A I think it is outlined how they are going to spend the

money through this whole situation.

Q What is the total price?

A The total price listed here is $1,193,435.

Q Do you know whether it is the intention of the Post Office to undertake those renovations? And I understand that you can't do some of those during the time that you are presently there, but is it the Post Office's intention, to the best of your knowledge, to do that work listed in that Exhibit?

A To a great degree, Mr. Dignan, it was. Fire protection, we had no alternative on, personal safety. The upstairs, the temperature went over a hundred degrees. There had to be air conditioning put up there in this interim period.

THE COURT: Before we leave this other question, you said the first time you knew that they were going to build in Henrietta is when they let the contract. Didn't you know that long before that they had bought and paid for land?

A Absolutely, sir. I've got the date right here. I misunderstood the question, if that is it. As far as the final decision to build a new Post Office, yes, I know

the date by when we were going to go out there. I was part of the input team as to where we were going to go. I gave the input as to the decision. If I misled you, Mr. Dignan, it wasn't my intention. I was part of the team as to where we were going to go. But I thought the question was, "When was the date of the decision actually made." I didn't know that. I knew we were going to go south of the City.

THE COURT: You knew it must have been made before they bought the real estate, didn't you?

A Absolutely. I'm not making the point clear. Your Honor, I didn't know the actual date that the decision was made to build the Post Office.

THE COURT: All right.

Q Mr. Finn, how intimately connected were you with the investigation of the General Dynamics site?

A To quite an extensive degree.

Q Do you know what the position of the Postal Service was as far as abandoning the Main Post Office at that time?

A It had not progressed to that point because the decision first had to be made as to whether we were going to go to General Dynamics.

* * * * *

carriers left --"

THE COURT: It is not necessary to read this document in evidence. It is in evidence. It can be used by anybody in the case for anything they want to use it for. But to put it in evidence and read it in evidence, that takes time and effort, and it is not necessary.

MR. DIGNAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Finn, I just want to clear up the record with regard to the date the decision was made on the construction of the new facility. You were aware when your original request went in, were you not?

A Yes, and my original request went in in August of 1970, and I have been working very close to the project since that time.

Q Were you aware of the condition of the Main Post Office at the time you made that request?

A Absolutely, and that was the basis for my request.

Q So you were aware of the condition of the Post Office

even before the Working Conditions Improvement Program Report, Defendants' Exhibit 37, was prepared, is that right?

A Right.

Q And you were aware that Mr. Beers had selected some fifteen sites in the area?

A Absolutely.

Q And you went around with him?

A I went around with him.

Q And you were aware that the Selection Committee had made a determination of what would be the most favorable site and what the second choice was?

A Yes. As a result of my original recommendation, the general part of the area that we would like it located.

Q The General Dynamics building is located in the City, is it not?

A I believe it is.

THE COURT: There is no question about it. It is on North Goodman Street.

Q And if the Post Office had relocated in the General Dynamics building and moved its Customer Services portion into the General Dynamics building, then downtown Rochester would still have a Customer Services facility, is that

right?

A We would have to take care of the public in the same manner they are being taken care of now in regard to Customer Services. The only thing that we are addressing ourselves to in the move is getting the mail operation, the factory part, out into Henrietta.

Q So the factory, the processing of mail, the part that the public doesn't see, is the only thing that is moving out there?

A Yes.

Q The actual Customer Services between the public going in and buying stamps or mailing letters and delivery will all be the same or better in the City, is that correct?

A They will all be the same or better.

Q Now decisions whether to relocate Customer Services or relocate facilities, is it fair to say that these are under constant evaluation?

A This is more than fair. It is the accuracy of it, as indicated by this letter here in 1970. We had one thought then, and we changed our thoughts, but they are under continual evaluation, yes.

Q And the evaluation that is conducted by the Post Office has one end, is that right?

A Yes.

Q And what is that end?

A The end is to give the best possible service at the least cost as much as possible.

MR. HOULIHAN: Thank you.

RECROSS EXAMINATION

BY MR. DIGNAN:

Q I show you Plaintiffs' Exhibit 12 in evidence, Page 3, Paragraph (d). Do you know where that statement came from with respect to the disposition of these facilities in November of 1975?

A I wouldn't know exactly where it came from. I just --

THE COURT: First, where does it occur right now? What is the Exhibit number?

MR. DIGNAN: It is Plaintiffs' Exhibit No. 12. Your Honor, it is in evidence.

THE COURT: What is it?

MR. DIGNAN: It is a letter dated November 13, 1975, to Ms. Ely from Mr. Kenyon.

THE COURT: Who made the state-

ment?

MR. DIGNAN: Mr. Kenyon.

THE COURT: That is where the statement came from, isn't that right?

MR. DIGNAN: Yes, Your Honor, but I want to know if he has ever heard of that statement contained in that letter at that time in November of 1975, whether Mr. Finn had known about it.

THE WITNESS: The statement, for the major part, Mr. Dignan, covers the policy, as I understand it, and it is no departure from my thinking. The last sentence is one that maybe Mr. Kenyon knew something about, but I didn't. He says, "It will be an improved facility that will offer better service to the downtown community." And the facility that I'm thinking about right now is the present facility that we will have to offer our customer services, to which is the same Main Post Office.

Q What about the disposition statement in that letter, con-

cerning the disposition of the present Post Office?

THE COURT: What does it say? What is the disposition, exactly what it says.

MR. DIGNAN: Do you want it read in the record, Your Honor?

THE COURT: No, but I would like to know in some way -- you can paraphrase it if you want to.

MR. DIGNAN: Your Honor, it is an answer to the question of Ms. Ely concerning the proposed disposition of the existing Post Office facility, and Mr. Kenyon said that the present facility most certainly will be surplus to the needs of the Postal Service and will be offered for sale, and I am asking Mr. Finn if he knows from where that policy came from.

THE WITNESS: I was reading the first part of the paragraph.

MR. DIGNAN: I know you were.

THE WITNESS: And remember, I've

never seen this letter before today.

THE COURT: Never mind whether you have seen it or not. That gentleman in Philadelphia says that will be surplus and will be offered for sale. Now do you know who the authority is for saying that?

THE WITNESS: No, I don't.

Q Mr. Finn, Mr. Houlihan asked you, "The one end of the Postal Service is what," or "to the one end"?

A To give the best possible service.

THE COURT: That sounds like a slogan.

MR. DIGNAN: I have no further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Finn, who is the highest officer in the Postal Service?

A The Postmaster General, Mr. Bailar.

Q Is that his instruction, or his position, that the Main Post Office will remain in Rochester, customer services will remain in Rochester for the foreseeable future?

A I believe so.

MR. HOULIHAN: Thank you.

Excerpts from Transcript of Testimony.
William E. Finn for Defendants, Recross by Mr. Dignan
and Redirect by Mr. Houlihan.

RECROSS EXAMINATION

BY MR. DIGNAN:

Q What do you base that on, Mr. Finn?

A From a newspaper article that I read.

Q And that is all, is that correct, sir?

A That is what I read, yes.

Q And the most recent document you have seen since then in writing from anybody in authority is Mr. Kenyon, which he said it would be disposed of, isn't that correct?

A I believe Mr. Bailar's was after Mr. Kenyon.

Q A newspaper article, is that right?

A That's right.

MR. DIGNAN: No further questions.

REDIRECT EXAMINATION

BY MR. HOULIHAN:

Q Do you know if the Real Estate Department is the department that makes policy decisions for the United States Postal Service?

A This is most difficult to answer, because I don't know the man. I don't know the division -- but I would say no, definitely.

Q He is General Manager, Real Estate Division?

A The Postmaster General would make the policy for the Post

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